QUESTIONS OF ORDER

DECIDED IN THE HOUSE OF REPRESENTATIVES AT THE SECOND SESSION, ONE HUNDRED TENTH CONGRESS

HON. NANCY PELOSI OF CALIFORNIA, SPEAKER
LORRAINE C. MILLER OF TEXAS, CLERK

QUESTIONS OF ORDER

POINT OF ORDER

(¶14.21)

TO A BILL TEMPORARILY EXTENDING THE SUNSET OF CERTAIN PROVISIONS OF A FOREIGN INTELLIGENCE SURVEILLANCE LAW, A MOTION TO RECOMMIT WITH INSTRUCTIONS PROPOSING PERMANENT CHANGES IN THAT LAW IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On February 13, 2008, Mr. CONYERS made a point of order against said motion to recommit with instructions, and said:

''The motion to recommit is not germane to the bill under consideration and therefore should not be considered.

''H.R. 5349 seeks a 21-day extension of the Protect America Act as previously amended, thus amending the act so that it would expire not 195 days but 216 days after enactment.

''The motion to recommit goes beyond the scope of the bill, and beyond the scope of the Protect America Act the bill temporarily extends, to make permanent changes to the FISA law, including retroactive legal amnesty for telecom companies who may have broken the law in cooperating with earlier surveillance activities. Because it goes beyond the scope of the bill and deals with a different purpose, it is not germane.''.

Mr. SMITH of Texas, was recognized to speak to the point of order and said:

''Madam Speaker, it is unfortunate that the Democratic majority is insisting on a procedural objection to block consideration of this motion to recommit. This motion substitutes the bipartisan bill passed yesterday by the Senate 68–29 to improve FISA, a bill that would dramatically improve our national security. It is sad to see the Democratic majority put procedure over substance when it comes to protecting Americans from terrorists.

''There is nothing more germane to the security of the American people than to take up the Senate bill as quickly as possible. Therefore, I would ask the gentleman from Michigan, the chairman of the Judiciary Committee, to withdraw his point of order and allow for an up or down vote on the bipartisan Senate reform bill. I hope the gentleman will withdraw his point of order and allow us to take a vote on a bill supported by both parties in the Senate, the administration, and many Democrats in the House.

''Again, I would like to reiterate my disappointment that the majority has raised a point of order against this motion to recommit. We need to stop playing procedural games with our national security and take a vote now on the Senate-passed bill to improve FISA.''.

Mr. CONYERS was further recognized and said:

''Madam Speaker, I have never violated parliamentary procedure, and I would insist upon the point of order.''.

The SPEAKER pro tempore, Ms. SOLIS, sustained the point of order, and said:

''The gentleman from Michigan makes a point of order that the motion to recommit offered by the gentleman from Texas proposes an amendment that is not germane to the bill.

''Clause 7 of rule XVI provides that no proposition on a subject different from that under consideration shall be admitted under color of amendment.

''The bill, H.R. 5349, extends the Protect America Act of 2007 for a limited time.

''The instructions contained in the motion to recommit propose permanent changes in law.

''A general principle of the germaneness rule is that where a bill is composed only of a temporary extension of existing programs, an amendment making permanent changes in law relating to such programs is not germane.

''The Chair will note a relevant precedent. On December 2, 1982, the Chair ruled that an amendment permanently changing the organic law governing an agency's operation was not germane to a bill that merely provided a temporary authorization for the agency. This precedent is recorded on page 722 of the House Rules and Manual.

''Therefore, in the opinion of the Chair, the instructions contained in the motion to recommit are not germane. The point of order is sustained.''.

Mr. SMITH of Texas, appealed the ruling of the Chair.

The question being stated,

Will the decision of the Chair stand as the judgment of the House?

Mr. CONYERS moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Ms. SOLIS, announced that the yeas had it.

Mr. SMITH of Texas, demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative { Yeas ..... 222 / Nays 196

¶14.22 [Roll No. 53]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PERSONAL PRIVILEGES

(¶15.22)

A MEMBER ROSE TO A QUESTION OF PERSONAL PRIVILEGE UNDER RULE IX ON THE BASIS OF MEDIA CHARACTERIZATIONS OF HIS OFFICIAL CONDUCT.

On February 14, 2008, Mr. Lincoln DIAZ-BALART of Florida, rose to a question of personal privilege.

The SPEAKER pro tempore, Mrs. TAUSCHER, pursuant to rule IX, recognized Mr. Lincoln DIAZ-BALART of Florida, for one hour.

''Madam Speaker, it is with great regret, but I must rise today for a question of personal privilege. An article appeared today, Madam Speaker, on the Web site of a publication called The Politico reprinting a statement by a spokesperson for the majority leader of this House describing actions of mine as 'incomprehensible' and 'unjustifiable' and insinuating that I purposely brought disrespect to the House and to the memory of my dear friend and colleague, Congressman Tom Lantos.

''It was not my actions which were incomprehensible or unjustifiable, Madam Speaker, but rather the actions of the majority which deprived all Members of this House the opportunity to debate or even consider or vote on the contempt resolutions brought to the floor today by the majority in an absolutely totally unprecedented fashion.

''The majority knows that the rule we considered earlier is totally and absolutely unprecedented. Its sole purpose was to prevent us from even debating or voting on these contempt resolutions. And further, the majority denied us the opportunity to take up the Foreign Intelligence Surveillance Act amendments passed by the Senate,

which we feel very strongly are in the supreme national interest of the United States.

''The majority knew that the minority was strongly of the belief that the only options available to us were procedural votes. The majority knew that we intended to utilize our procedural options to register our displeasure with this uncalled-for process.

''We purposely refrained from all procedural motions during the opening moments of the session today precisely to show respect for our friend and departed colleague.

''We were assured by the majority that we would not begin consideration of the rule, in other words, that the House would not reconvene until 11:30 a.m. or the conclusion of Mr. Lantos' memorial service.

''Tom Lantos, Madam Speaker, was an extraordinary man, a great man, and he was my friend. It was an honor for me to be present today at his memorial service in Statuary Hall. I was suddenly summoned out of the memorial service for my friend Mr. Lantos to perform my responsibilities as a member of the Rules Committee, to manage the rule for the minority side for the contempt resolutions. The majority had decided to resume the session during the memorial service.

''Madam Speaker, I am a member of the minority. Neither I nor my leadership control when the House convenes. What we saw today was an uncalled-for effort by the majority to force the minority to give up our rights to protest a process we feel is blatantly unfair.

''The majority's decision to reconvene the House interrupted the tribute to my good friend Mr. Lantos. It is the majority that decides when to convene the House. It is the majority that chose to convene the House even though many speakers remained to speak in the memorial for Mr. Lantos.

''I was told by my good friend Mr. DREIER that he does not recall any memorial being interrupted by a House session, and he has been here more years than I have. I have been here 15, and obviously I don't recall any either.

''Madam Speaker, the statement attacking me today by a spokesperson for the majority leader was totally uncalled for and unacceptable.''.

Mr. DREIER was recognized and said:

''Madam Speaker, I thank my friend for yielding. And we have all come to the conclusion that this has been a very sad day in many ways. Of course, the saddest part of it was the loss of our dear friend and colleague, Tom Lantos.

''I would simply like to say that Mr. DIAZ-BALART had the responsibility of serving as the floor manager for a rule that was, as he said in his very thoughtful statement, unprecedented. And we had a debate on that rule, and this House chose to do something it had never done before, pass a rule which took two contempt resolutions and adopted them. That was a decision of the House. And I think it was an unfortunate one.

''Mr. DIAZ-BALART had a responsibility to stand up for this institution. He and I stood together at that service, heard from colleagues of ours and heard from many other distinguished people who remembered the life of Tom Lantos.

''We were stunned when all of a sudden the bells rang and the House was going to reconvene in the middle of this memorial service.

''Now, members of the majority staff, Madam Speaker, had been informed, had been informed, of exactly what it was that we in the minority were going to do. If the House reconvened and we proceeded with consideration of this special rule, we had informed the members of the majority staff that we were going to call for a vote.

''So Mr. DIAZ-BALART was simply working to, under very, very, very challenging, and, again, from my perspective, unprecedented circumstances, where I had never before seen the House of Representatives convened during a memorial service being held in Statuary Hall, but under those circumstances, Mr. DIAZ-BALART had the responsibility to fulfill his duties, not to the Republican Members, but to do what he believed to be right, and I agree with him, obviously, in upholding the rights of this institution. So for any Member, any Member or anyone outside to malign Mr. DIAZ-BALART for simply doing his job under very difficult circumstances is not right.

''Let me conclude by simply saying that Mr. DIAZ-BALART is one of those Members who we all know is a fighter for freedom and has been throughout his entire life. In many respects, Lincoln DIAZ-BALART is very similar to Tom Lantos.

''Madam Speaker, I will say that it is a tragic irony that as we are remembering the life of Tom Lantos that a Member like Lincoln DIAZ-BALART would in any way be maligned for his work on behalf of the struggle for freedom and democracy and the liberation of people all over this world.''.

Mr. BLUNT was recognized and said:

''I would say, of course, we come to the floor today with lots of disappointment on what we are failing to do today. We think we should stay until we get other matters done. But on this issue that relates to the activities of the day, first of all, I was at the memorial service, as many of you were. I was privileged to be there. Frankly, there are very few Members of Congress, in the history of the Congress, that could have, on the very short notice that we would have this sad service today, would have the Foreign Minister of Israel, the Secretary of State, the head of the United Nations, the Speaker of the House present. It was an impressive service, and I hate that we are having this debate around any lack of respect for that service.

''On the other hand, the only work we had to do today was 1 hour of debate on a rule that would then also replace the debate. One hour of debate. The service was scheduled to last from 10 o'clock until 11:30. It turned out it lasted until 11:50. But it was scheduled to last from 10 o'clock until 11:30.

''When at 10:45 the majority decides we are going to start the 1 hour of work we have to do today at 11, the majority should expect the other side to complain. If in fact Mr. DIAZ-BALART had not had his objection, 50 minutes of that 1-hour debate would have gone before I ever walked out of the memorial service. The vote lasted 50 minutes, or thereabouts. Apparently, Members couldn't even get in to vote for 50 minutes, let alone to get in to participate in the debate.

''Of course, we should have said, let's not start the debate on the only work we are doing today while we are passing up the work on the Foreign Intelligence Surveillance Act. We are voting to talk about how you can kill rats in the technical correction to the Federal Insecticide, Fungicide, and Rodenticide Act. That is the only debate we were going to have during 50 minutes of the 1 hour of the memorial service. And of course Lincoln DIAZ-BALART or somebody should have stepped up to stop that, and thank goodness he did.

''I am really sad that a service we should have all agreed on would be the priority of the morning, we couldn't manage for that to be the priority of the morning. We had to start the 1 hour of work we had to do 50 minutes before that service turned out to end and 30 minutes before it was scheduled to end.

''I am regretful that my good friend had to rise to this moment of personal privilege, but I certainly support him in seeking this privilege and hope that the Members of the House will understand what happened here and appreciate the great respect we all have for Tom Lantos.''.

Mr. HOYER was recognized and said:

''I rise, as I have a couple of times in the past, to simply say that I think on our side, obviously, we believed that we needed to move forward on the work. All of us, however, share what has been said about Tom Lantos, for whom we had the greatest respect, and we all share a sadness at his loss.

''I regret that the actions that precipitated this hour that you are taking have occurred. They have occurred. We can't change them. Having said that, I want to say that I understand the point the gentleman is making, and I understand the point my friend Mr. BLUNT has made. I think it will suffice to say that. But I can appreciate the position the gentleman found himself in and that Mr. BLUNT and his leadership found themselves in.''.

Mr. Lincoln DIAZ-BALART of Florida, was further recognized and said:

''Thank you. Madam Speaker, I utilized the opportunity of the rules to rise to a question of personal privilege due to the statements attributed in the press that I mentioned before to a spokesperson, which I stated and restated I believe were totally uncalled for and unacceptable.

''I thank all of you for having listened to me with such courtesy. It is for someone who arrived as a 4-year-old refugee with his family fleeing oppression, an extraordinary moment in the midst of the sadness of the day, and the offense that I felt, it is an extraordinary moment to be able to rise and invoke the rules of the House to seek the attention of the representatives of this extraordinary Nation. So I thank each and every one of you for your patience and your courtesy.

''At this point, after thanking Mr. DREIER, thanking Mr. BLUNT, and thanking the majority leader for their kind words, I simply end remembering a friend who everyone in this room can agree enriched our lives. My son mentioned the other day this week when we were talking about the sad news, he said, Dad, do you remember when I was a little kid and you wanted me to get my posture up, what you would tell me? I will never forget, he told me. Lantos. Your posture. That is one of the first things that impressed me about Tom Lantos, even before I learned about his zealous extraordinary commitment to the oppressed everywhere where people are still longing to be free.

''So let us all then end this recollection of what I believe was a very unfortunate moment remembering someone who we can all agree was extraordinary, enriched our lives, and was a great Member of Congress and a great American. Thank you all very much.''.

POINT OF ORDER

(¶20.22)

TO A BILL CONFINED TO PUBLIC HOUSING, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON FINANCIAL SERVICES, A MOTION TO RECOMMIT WITH INSTRUCTIONS PROPOSING TO AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON THE JUDICIARY AND THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On February 26, 2008, Mr. SIRES made a point of order against said motion to recommit with instructions, and said:

''Madam Speaker, I make a point of order that the amendment is not germane to the bill. The bill H.R. 3773 has nothing to do with the asset management bill under consideration.''.

Mr. SMITH of Texas, was recognized to speak to the point of order and said:

''Madam Speaker, once again, the Democratic majority is insisting on a procedural objection to block consideration of the Senate-passed FISA modernization bill. This motion to recommit adds the bipartisan bill passed 2 weeks ago by the Senate, 68–29.

''Madam Speaker, there is nothing more germane to the security of the American people than to take up the Senate bill as quickly as possible.

''Now I would like to reiterate my disappointment that the majority has raised a point of order against this motion to recommit.

''Madam Speaker, I would like to ask the gentleman to withdraw his point of order and allow for an up-or-down vote on the bipartisan Senate reform bill.''.

Mr. SIRES was further recognized and said:

''Madam Speaker, I insist on my point of order.''.

The SPEAKER pro tempore, Mrs. TAUSCHER, sustained the point of order, and said:

''The instructions in the motion to recommit propose an amendment consisting of the text of an entirely different measure that falls outside the jurisdiction of the Committee on Financial Services. The instructions are therefore not germane. The point of order is sustained. The motion is not in order.''.

Mr. SMITH of Texas, appealed the ruling of the Chair.

The question being stated, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. SIRES moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mrs. TAUSCHER, announced that the nays had it.

Mr. SIRES demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 218 Nays 195

¶20.23 [Roll No. 77]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶21.6)

PURSUANT TO SECTION 426(B)(4) OF THE CONGRESSIONAL BUDGET ACT OF 1974, A MEMBER WHO MAKES A POINT OF ORDER UNDER SECTION 426(A) OF THE ACT AND SATISFIES THE THRESHOLD BURDEN SPECIFIED IN SECTION 426(B)(2) OF THE ACT BY CITING LANGUAGE IN THE RESOLUTION THAT WAIVES THE APPLICATION OF SECTION 425 OF THE ACT IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

PURSUANT TO SECTION 426(B)(3) OF THE CONGRESSIONAL BUDGET ACT OF 1974, AS DISPOSITION OF A POINT OF ORDER RAISED UNDER SECTION 426(A) OF THE ACT, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE PROPOSITION THAT IS THE OBJECT OF THE POINT OF ORDER.

On February 27, 2008, Mr. CONAWAY made a point of order against consideration of said resolution and said:

''Mr. Speaker, I make a point of order against the consideration of the resolution because it is in violation of section 426(a) of the Congressional Budget Act.

''The resolution provides that all points of order against consideration of the bill are waived except those arising under clause 9 and 10 of rule XXI. This waiver of all points of order includes a waiver of section 425 of the Congressional Budget Act which causes the resolution to be in violation of section 426(a).''.

The SPEAKER pro tempore, Mr. SALAZAR, responded to the point of order, and said:

''The gentleman from Texas makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

''The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

''After that debate the Chair will put the question of consideration, to wit: 'Will the House now consider the resolution?'.''.

Mr. CONAWAY was further recognized and said:

''Mr. Speaker, this bill that is the subject of this rule that is about to come before us includes two tax increases, one on section 199, which eliminates the oil and gas industry's ability to take advantage of this provision within the law to increase their taxes over the next 10 years by some $13 billion. There is also some tweaking with, and that's an odd word to use when it raises $4 billion, but a tweaking with the way foreign oil and gas income plays into the computation of the foreign tax credits that these companies could take advantage of.

''Both of these violate the Unfunded Mandate Reform Act provision on private initiatives and therefore are subject to this point of order on being waived. So I think that favorable consideration of this point of order is where we should be going with respect to the private sector mandates that are waived under this rule.''.

Mr. FLAKE was recognized to speak to the point of order and said:

''Mr. Speaker, as was mentioned, you could easily say that there are unfunded mandates in the bill. You could also say there is a particular earmark in the bill. Because the bill didn't go through regular order and we don't have a committee report to go along with it, there was not a certification that came saying that there were no earmarks in the bill.

''Of particular concern is a provision that would allow New York City to keep up to $2 billion worth of the em-

ployer share of payroll taxes and invest the funds in a transportation project. This is not the first time we have seen this. The New York Liberty Zone Tax Credit earmark was included in a previous energy bill passed by the House, but it was removed by the Senate.

''Now, I think we can all quibble about where the benefits go on some of these things, but it's clear that the target here is New York City. It's a targeted tax provision, and it's what we typically refer to as an earmark in the authorizing bill. And I would say that if it looks like an earmark and acts like an earmark, it is one. And it shouldn't be in this bill unless there is some kind of certification or something that is not an earmark. I just don't know how you can call it anything but that. This is just another example of how little impact Congress's steps to reform the process have actually had in the day-to-day operation of the House.

''For a point of order against an earmark to be rejected, the chairman needs to simply insert a statement into the RECORD saying there are no earmarks in the bill, and then the point of order can't be lodged. Here we don't even have that kind of statement, and still we are saying a point of order can't be lodged in this regard.

''So I would say that we ought to reject this bill for many reasons, not the least of which it's going to blow a $2 billion hole in the budget here for a limited specific tax provision benefiting only one group across the country.''.

Mr. CONAWAY was further recognized and said:

''I thank my colleague for pointing that out.

''Mr. Speaker, the Congressional Budget Office on a similar, almost exact, bill, 2776, earlier in the year, clearly stated that these were unfunded mandates. They breached the threshold appropriate under the Unfunded Mandate Reform Act, and a point of order should be sustained against this bill.''.

Ms. MATSUI was recognized to speak to the point of order and said:

''This point of order is about whether or not to consider this rule and ultimately the underlying bill. In fact, I would say that it is simply an effort to try to kill this bill before we even have an opportunity to debate it. I hope my colleagues will vote 'yes' on this procedural motion so we can consider this important legislation today.

''Mr. Speaker, H.R. 5351 is about investing in clean, renewable energy and energy efficiency. It is about boosting our economy and national security while protecting our environment.

''It is abundantly clear that our dependence on foreign oil has skyrocketed with much of it imported from the volatile Middle East with a price tag today of $102 a barrel. It's time to reduce our dependence on foreign oil, not only to strengthen our national security but to support domestic production of renewable energy. We need to take action now and start by considering and passing the Renewable Energy and Energy Conservation Tax bill today.

''This bill is about the hardworking American families. It is about creating jobs for the American worker and about protecting their rights. If we are creating jobs in this bill, which we are, we should be making sure that workers are making prevailing wages.

''The Davis-Bacon Act requires contractors to pay no less than the locally prevailing wage on Federal contract construction. Davis-Bacon was adopted in 1931, during the Hoover administration, to protect the rights of the American workforce. During the more than 70 years since its enactment, Davis-Bacon has come under fire many times but has always received support from the Congress and American families who benefit from it.

''The Renewable Energy and Energy Conservation Tax Act addresses the priorities of the American people. In addition to tackling our energy crisis, H.R. 5351 complies with PAYGO rules, which is a priority of the 110th Congress. The bill is therefore paid for. Most of the funding is by reducing tax cuts to the top-earning oil companies. In order to pay for the important tax extensions and comply with PAYGO, there had to be revenue raisers. Our country is facing record deficits, and this Congress is acting responsibly.

''This bill will develop a progressive energy policy that is long term, not shortsighted. It does away with the tired strategies of the past, which focused only on producing more oil at the expense of the environment and of the American taxpayer. We are heeding the calls of the American people by adopting it.''.

Mr. BOSWELL was recognized to speak to the point of order and said:

''I oppose this point of order. I think that the gentlewoman from California made it very clear that it is appropriate and needed that we do what we're trying to do with H.R. 5351. And I want to support the rule for H.R. 5351, and I would like to thank Congresswoman MATSUI for her leadership and Chairman RANGEL for their continued work to ensure these vital tax credits are extended.

''This legislation takes many needed steps to ensure the United States continues to be a major player on the renewable energy stage. This legislation extends the renewable energy production tax credit which Iowa and my district have seen firsthand the benefits of. It creates a cellulosic alcohol production tax credit which will give a 50 cent per gallon credit for cellulosic alcohol produced for use of fuel, a step to get us out of bondage to OPEC, and anybody knows we have got to do this for the salvation of this country. This legislation also extends the biodiesel production tax credit and creates a new credit for plug-in hybrid vehicles, among other things.

''I'm also pleased to see that components of a bill I introduced, H.R. 5373, the Consumer and Manufacturer Energy Efficient Tax Credit Extension Act, were also included in this legislation. The underlying bill, which goes further than mine, would extend and modify the energy efficient appliance credit for 3 years and extend and modify the energy efficiency tax credits for improvements to existing homes.

''I'm very pleased to see that the chairman, the gentlewoman from California [Ms. MATSUI], and the House leadership recognize these tax credits are important, not only to the environment but also to the economy. I believe that all consumers want to make more energy-efficient choices, and this legislation will help them do that. It's a win-win situation for the environment and the American consumer's pocketbook.

''Iowa has been a leader for renewable energy, and I am proud to say in my district we are leading the State with a new biodiesel plant in Newton just last year and a new wind turbine plant, which provides the State with the equipment needed to supply its growing wind energy.

''I am also excited that we have the opportunity to make America more energy independent, create high-tech 'green' jobs for a 'green future,' ensure low-income families have affordable energy costs, and I look forward to continuing to work for a more energy-efficient future.

''So, again, I thank the gentlewoman for this time. And I would once again reiterate my support for this rule, that we can move on and oppose this point of order.''.

Mr. CONAWAY was further recognized and said:

''I was laboring under a misconception that the debate was to be limited to the point of order rather than the underlying bill itself. So since the other side has raised the issues in the bill, I'll take a couple of seconds to add some gratuitous comments about those as well rather than strictly talking about my point of order.

''At a time when we are clearly dependent on foreign oil, imported foreign oil, crude oil, and natural gas, and everyone recognizes that it's a strategic vulnerability to our country, a reduction in domestic production of crude oil and natural gas seems to be very wrongheaded in the sense of trying to reduce our dependency on imported foreign oil and natural gas.

''This bill will take $17 billion out of the search for crude oil and natural gas, domestic supplies in most instances, and put it towards some very worthy initiatives in terms of trying to find alternatives to that. There is no rational projection that any of these alternatives will develop in the next 15 to 20 years to supplant the need for crude oil and natural gas to drive the economy, whether you're talking about generating electricity or driving cars and trucks and airplanes. So at a time when we are fully dependent on crude oil and natural gas, it seems to make eminent sense that we ought to be en-

couraging domestic oil and gas companies to reinvest their profits, reinvest their moneys back in the ground.

''Now, mechanically what happens with respect to the oil and gas business is when they do find crude oil and natural gas, they find reserves in the ground and there is value associated with those reserves. Typically, those producers then go to the bank and use those reserves as collateral in the ground to borrow more money to spend additional money going into the ground. So for each dollar that we increase their taxes, there is a multiple of that dollar that does not get spent on searches for crude oil and natural gas that would be used domestically. We do nothing about the restrictions on a responsible, environmentally sound development of other areas that have proven crude oil and natural gas reserves, domestic crude oil and natural gas reserves. We do nothing in this legislation to affect that.

''In addition, my colleagues brought up the vaunted PAYGO rule, which is used almost every day in this Chamber. Quite frankly, these taxes have been used multiple times already in this Congress to pay for a variety of things. So if our constituents back home fully understood how theatrical the PAYGO situations with this bill really are, they would be probably offended, that that is just the typical Washington business-as-usual kinds of things that are going on.

''So while this bill, I believe, creates an unfunded mandate that is in violation of the Unfunded Mandate Reform Act and it should be properly subject to this point of order, the underlying bill itself is flawed on a variety of things as well.

''I will close, then, by just saying that I believe this point of order should be sustained and this rule should be defeated.''.

Ms. MATSUI was further recognized and said:

''Again, Mr. Speaker, I urge my colleagues to vote ''yes'' on the motion to consider so we can debate and pass this important piece of legislation today.''.

After debate,

The question being put, viva voce,

Will the House now consider the resolution?

The SPEAKER pro tempore, Mr. SALAZAR, announced that the yeas had it.

Mr. CONAWAY demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	224
	Nays	186

¶21.7 [Roll No. 78]

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

POINT OF ORDER

(¶21.14)

TO A BILL CONFINED TO FEDERAL TAXATION, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, A MOTION TO RECOMMIT WITH INSTRUCTIONS PROPOSING TO AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON THE JUDICIARY AND THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On February 27, 2008, Mr. RANGEL made a point of order against the motion to recommit with instructions, and said:

''Mr. Speaker, I make a point of order that the motion to recommit is not germane to the underlying bill, and I insist on my point of order.''.

Mr. HOEKSTRA was recognized to speak to the point of order and said:

''Mr. Speaker, as the distinguished chairman talked about in his closing remarks, and as the majority leader discussed in his closing remarks, the energy security of the United States is directly tied to the national security of the United States.

''It is beyond me to understand how the proponents of this bill can claim that the legislation before us this afternoon protects the energy independence and energy security of the United States when our critical foreign intelligence capabilities, designed specifically to protect the national security of the United States, continue to degrade. This, of course, happened 11 days ago with the expiration of the Protect America Act.

''Again the proponents of the bill say the energy security of the United States is directly tied to the national security of the United States. And that is why this motion to recommit should be considered in order.

''The national security of the United States is directly tied to the effectiveness of the tools that we give to the intelligence community. The same radical jihadist groups who attacked the United States on September 11, 2001 are continuing their plans to attack the United States and its citizens. You don't have to take my word for it. Read the declassified excerpts of the National Intelligence Estimate released by Director McConnell.

''The majority leader and others who are proponents of this bill have pointed out America's vulnerability on energy issues.

''And as we have said, your words were that this is a national security issue and it is imperative that we deal with it. The majority leader's words, we are talking about the threats to our oil supply and our energy supply, whether it was from Venezuela, whether it was from the Middle East or other parts of the world. We significantly enhance and increase our vulnerability on an energy standpoint when we let the tools of the intelligence community erode and when we no longer have good insight into what radical jihadists may be doing in Pakistan or what they may be doing in the Middle East or what they may be doing in South America when specifically these are the home bases of radical jihadists. You also have to take a look specifically at radical jihadists and take a look at where they are saying they want to act. They want to destabilize many of the governments that provide us with the oil and energy supplies that this country is so dependent on.

''Again, getting back to the point, the chairman has talked about energy security being tied to national security. This motion to recommit will do more to secure our energy independence and will do more to protect our energy security and national security than many of the other provisions in the bill because it specifically gives the tools to our intelligence community to protect not only our domestic sources of energy, but also enables us to protect the sources of energy that come from overseas.''.

Mr. RANGEL was further recognized and said:

''Mr. Speaker, I object. The proponent is not dealing with the question of the point of order but is dealing with another subject matter.''.

The SPEAKER pro tempore, Mr. GUTIERREZ, spoke and said:

''The gentleman from Michigan must confine his remarks to the point of order.''.

Mr. HOEKSTRA was further recognized and said:

''Thank you. That is exactly what I am talking about. I thank my colleague for pointing that out.

''And as we have said, your words were that this is a national security issue and it is imperative that we deal with it. The majority leader's words, we are talking about the threats to our oil supply and our energy supply, whether it was from Venezuela, whether it was from the Middle East or other parts of the world. We significantly enhance and increase our vulnerability on an energy standpoint when we let the tools of the intelligence community erode and when we no longer have good insight into what radical jihadists may be doing in Pakistan or what they may be doing in the Middle East or what they may be doing in South America when specifically these are the home bases of radical jihadists. You also have to take a look specifically at radical jihadists and take a look at where they are saying they want to act. They want to destabilize many of the governments that provide us with the oil and energy supplies that this country is so dependent on.''.

Mr. RANGEL was further recognized and said:

''The proponent's speech is not related to the parliamentary question of the relevancy to the point of order.''.

The SPEAKER pro tempore, Mr. GUTIERREZ, spoke and said:

''The Chair will hear the gentleman on the point of order, but his remarks must be confined to the question of the point of order and may not dwell on the underlying substantive issue.''.

Mr. HOEKSTRA was further recognized and said:

''Thank you.

''Again, getting back to the point, the chairman has talked about energy security being tied to national security. This motion to recommit will do more to secure our energy independence and will do more to protect our energy security and national security than many of the other provisions in the bill because it specifically gives the tools to our intelligence community to protect not only our domestic sources of energy, but also enables us to protect the sources of energy that come from overseas.''.

Mr. RANGEL was further recognized and said:

''Mr. Speaker, I have all the respect for the proponent of the motion to recommit on the subject matter that he is trying to bring to the attention of this House, but the RECORD has got to indicate that as this great Nation and this House try to deal with the serious problem of global warming, of loss of jobs, of national security, of a variety of things that we should be focused on, that if the rule should be used constantly throughout this debate for a purpose other than the reason why this bill is before this House, it not only violates the parliamentary rules, but the spirit in which we should be looking at this energy bill. So I insist on my point of order.''.

The SPEAKER pro tempore, Mr. GUTIERREZ, sustained the point of order, and said:

''The Chair will rely on the precedent of February 26, 2008. The instructions in the motion to recommit address a totally unrelated measure within the jurisdiction of committees not represented in the underlying bill. The instructions are therefore nongermane and the point of order is sustained. The motion is not in order.''.

Mr. HOEKSTRA appealed the ruling of the Chair.

The question being stted, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. RANGEL moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. GUTIERREZ, announced that the yeas had it.

Mr. HOEKSTRA demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	222
	Nays	191

¶21.15 [Roll No. 82]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶25.24)

PURSUANT TO SECTION 426(B)(4) OF THE CONGRESSIONAL BUDGET ACT OF 1974, A MEMBER WHO MAKES A POINT OF ORDER UNDER SECTION 426(A) OF THE ACT AND SATISFIES THE THRESHOLD BURDEN SPECIFIED IN SECTION 426(B)(2) OF THE ACT BY CITING LANGUAGE IN THE RESOLUTION THAT WAIVES THE APPLICATION OF SECTION 425 OF THE ACT IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

PURSUANT TO SECTION 426(B)(3) OF THE CONGRESSIONAL BUDGET ACT OF 1974, AS DISPOSITION OF A POINT OF ORDER RAISED UNDER SECTION 426(A) OF THE ACT, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE PROPOSITION THAT IS THE OBJECT OF THE POINT OF ORDER.

On March 5, 2008, Mr. BROUN of Georgia, made a point of order against consideration of said bill, and said:

''Mr. Speaker, I make a point of order against the consideration of the resolution because it is in violation of section 426(a) of the Congressional Budget Act.

''The resolution provides that 'all points of order against consideration of the bill are waived except those arising under clause 9 and 10 of rule XXI.' This waiver of all points of order includes a waiver of section 425 of the Congressional Budget Act which causes the resolution to be in violation of section 426(a).''.

The SPEAKER pro tempore, Mr. HOLDEN, responded to the point of order, and said:

''The gentleman from Georgia makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

''The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

''After that debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?'.''.

Mr. BROUN of Georgia, was further recognized and said:

''Mr. Speaker, I have both professional and personal interest in this bill. I'm a medical doctor, and for years I've treated depression, anxiety, a lot of panic disorders. I'm also an addictionologist. I've treated drug and alcohol addiction and eating disorders. And so I've had many patients over the years that have had these kinds of problems.

''My mom has been involved in dealing with her own depression all the way up until she died of metastatic breast cancer, and she worked with the mental health society in our home community.

''I also have personal interest in this bill because my wife has suffered from depression. She has an eating disorder and has dealt with this in her history. She has suffered from depression to the point that several years ago she even tried to take her own life, and except for the grace of God she should have died. And so I do have a very personal interest in this bill. Mr. Speaker, this is why I have a vested interest in how Congress addresses health care, and especially mental health coverage.

''CBO estimates that the cost of the mandates to the private sector in this bill would be at least $1.3 billion in 2008; and this would rise to $3 billion in 2012. The Unfunded Mandates Reform Act, or UMRA, establishes an annual threshold that cannot be exceeded, at least without Congress waiving this rule. For 2007, that threshold amount is $131 million, a great deal of money. This bill exceeds the $131 million threshold by over $1 billion, and it will place a crushing burden on private health insurers and millions of Americans seeking affordable health insurance. These mandates will directly harm businesses and Americans' ability to obtain affordable health insurance.

''This legislation is very well intended. It is also rash and very poorly drafted and I assure you that if this mental health parity bill is signed into law in its current form, it will result in at least three things:

''H.R. 1424 will increase health insurance and mental health costs;

''H.R. 1424 will result in Americans losing their mental health coverage due to the mandates and the increased costs of those mandates;

''H.R. 1424 will result in a myriad of lawsuits.

''I testified before the Rules Committee last night and offered two amendments that would have drastically improved this legislation. Well, the Democratic majority, instead of choosing to allow an honest dialogue and an open debate on an extremely important issue of mental health, they chose to deny all amendments to this legislation. Not only that, the majority changed the underlying bill's language late last night and inserted the text of the Genetic Information Non-Discrimination Act. This legislation will further erode mental health parity and jeopardize affordable group health insurance in America.''.

Ms. CASTOR was recognized to speak to the point of order and said:

''I strongly oppose the gentleman's point of order.

''This point of order is being raised today for one purpose and one purpose only, that is, to block this rule and ultimately the underlying bill, an underlying bill that prohibits discrimination against Americans with mental illness.

''I'm heartened by the fact that I do not believe the gentleman's point of

order comes from a unanimous opinion of the other side of the aisle because the underlying bill is a bipartisan effort cosponsored by 274 Members of the House of Representatives. Yet there are opponents of this bill, and they will raise these dilatory tactics. The opponents don't even want to allow a debate or a final vote on this critical measure. They simply want to stop the process and kill the bill through this procedural maneuver.

''So despite whatever dilatory procedural devices the other side tries to use to stop this bill, we will stand up for the millions of Americans who need parity in mental health coverage, and we will vote to consider this important legislation today.

''We must consider this rule, and we will pass the Paul Wellstone Mental Health and Addiction Equity Act today.''.

Mr. HASTINGS of Washington, was recognized to speak to the point of order and said:

''I could hardly believe my ears when I heard my friend from Florida say that this is a dilatory tactic, and the idea was to, what was it, to deny a vote on this bill? For goodness sakes. Last night there were several attempts, several attempts to try to improve this bill in a way that would make it more palatable to more people in this House, and they were turned down every time by the majority, Democrat majority, in the Rules Committee. And so for my friend from Florida to stand up and say that that is an attempt to kill this bill, when last night she participated in an exercise to do exactly that, is just beyond me.''.

Mr. BROUN of Georgia, was further recognized and said:

''Mr. Speaker, I want to say that I resent my sincerity on this being questioned by the gentlelady from Florida. I am very sincere about this.

''I am very sincere about this. I talked to the Rules Committee last night. I have talked on this floor here tonight. And for you to make these charges that I'm not sincere about this bill is absolutely incorrect. Maybe the gentlelady didn't hear me, but I have very personal interests in mental health. It is an extremely important issue to me, to my wife, to my family. And for you to say I'm not sincere about this, I am just very shocked about that. But I am sincere.

''This bill, the way it's written, is going to actually deny people mental health coverage. We tried to fix it last night, make it better. And those attempts were denied over and over and over again.''.

Mr. COHEN was recognized to speak to the point of order and said:

''My father was a physician. After being a pediatrician for many years, he chose to change his specialty and go into psychiatry, and then child adolescent psychiatry. As a result of that, I was exposed to mental health issues and mental health treatment and the need for mental health professionals throughout this country.

''There has been a misconception in this country about people needing mental health treatment and their being adequately covered by insurance. In the same way that a physical illness affects people, mental illnesses do. And mental health treatment has been woefully undercovered and underserved, people who suffer from that in our country.

''I am proud to be a cosponsor of this bill and to join with the gentleman from Minnesota and the gentleman from Rhode Island who brought the bill and other cosponsors, because I think it shows that this Congress understands that mental health treatment needs to be covered, that diseases of the mind are similar to diseases of the body, the effect they can have on a person's overall well-being, but that their mental health and their physical health are also intertwined, and if mental health is not treated, physical health is affected.

''We need to be concerned about all of our fellow citizens, our brothers and sisters who might suffer from any illness. And it's time that we came out from the cloak of an ancient time when we looked upon mental health treatment as something to be shunned, to be embarrassed about if it was somebody in our families, our friends, or even ourselves. And so I wholeheartedly endorse this bill and feel that the passage of this bill will be a great day for Americans and for science.''.

Mr. BROUN of Georgia, was further recognized and said:

''Mr. Speaker, in addition to the concerns that I raised earlier regarding the provisions of the mental health parity bill, that it will actually decrease mental health coverage and increase health insurance costs, let me share several additional concerns I have with the Genetic Information Non-Discrimination Act that was inserted late last night.

''Title I of the GINA legislation imposes Federal mandates on health plans regarding insurance coverage, while title II imposes mandates on employers regarding employment and related hiring decisions. However, there is no explicit language in this legislation clarifying that group health insurance plan sponsors may not be subjected to the more expansive remedies provided by title II.

''Why is that a problem? Because title II provides for rulemaking by the EEOC, the Equal Employment Opportunity Commission, and remedies before the EEOC and, ultimately, Federal courts.

''During floor debate on H.R. 493, Congressman ROB ANDREWS suggested that 'employers, including to the extent employers control or direct benefit plans, are subject to the requirements of title II of this bill,' including the much broader definition of genetic testing and tougher penalties associated with that title.

''I believe that this lack of clarity could and will lead to additional lawsuits through the use of broader remedies available in title II that are intended to be reserved for employers who violate their employees' civil rights, not for employees seeking to litigate group health plan disputes.

''Further, section 502 of ERISA says that all lawsuits must go through Federal court, which is not addressed in the mental health parity legislation. Nothing in this bill states that section 502 is preserved, so lawsuits can and will be brought in State court.

''Mr. Speaker, I want to go through just a list of some things that this bill will do.

''It's going to increase health care costs. CBO estimates that H.R. 1424 would impose mandates on private insurance companies, a total of $3 billion annually by 2012. These costs will ultimately be borne by employers offering health insurance and employees seeking to obtain coverage.

''Number two, it will increase the cost of business due to private sector mandates. The bill contains multiple new Federal mandates on the private sector, affecting the design and structure of health insurance plans.

''The bill also increases the threshold level at which employees suffering increased claim costs as a result of implementing the new Federal mandates can claim an exemption from the provisions of H.R. 1424.

''Number three, I think this will decrease the mental health coverage. While the bill imposes several new Federal mandates on those employers who choose to offer mental health coverage, there is nothing in H.R. 1424 that would require plans to cover these conditions. Thus H.R. 1424 could have the perverse effect of actually decreasing mental health coverage by encouraging an employee who is frustrated with the bill's onerous burdens to drop mental health insurance altogether.

''Four, I think it will increase the number of uninsured. It will erode the Federal preemption for employers. This codification of treatment mandate for health plans, they are going to use DSM-IV to codify that. And this book, DSM-IV, was generated for physicians to use just to be able to classify mental health. It has a whole lot of things in here that most employers would not want to cover.

''It will increase an intergovernmental mandate. It is a violation of UMRA. It has a lack of conscience clause, and it has a lack of medical management tools.''.

Ms. CASTOR was further recognized and said:

''Mr. Speaker, I urge a 'yes' vote on the consideration of the resolution so we can move forward on the rule and to consider the bill.

''Those that oppose our efforts to end discrimination when it comes to mental health services will get their opportunity to debate the bill and to vote against these measures.

''So with that, Mr. Speaker, I urge a 'yes' vote to consider the rule.''.

After debate,

The question being put, viva voce,

Will the House now consider the resolution?

The SPEAKER pro tempore, Mr. HOLDEN, announced that the nays had it.

Ms. CASTOR demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative .....

Yeas	215
Nays	192
Answered present	1

¶25.25 [Roll No. 94]

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

POINT OF ORDER

(¶25.33)

TO A BILL CONFINED TO HEALTH CARE INSURANCE, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEES ON ENERGY AND COMMERCE, WAYS AND MEANS, AND EDUCATION AND LABOR, A MOTION TO RECOMMIT WITH INSTRUCTIONS PROPOSING TO AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON THE JUDICIARY AND THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On March 5, 2008, Mr. PALLONE made a point of order against the motion to recommit with instructions, and said:

''Mr. Speaker, I insist on my point of order.

''I raise a point of order that the motion to recommit contains nongermane instructions in violation of clause 7 of Rule XVI. The instructions in the motion to recommit address an unrelated matter within the jurisdiction of a committee not represented in the underlying bill.''.

The SPEAKER pro tempore, Mr. SNYDER, sustained the point of order, and said:

''The Chair will rely on the precedents of February 26 and February 27, 2008. The instructions in the motion to recommit address foreign intelligence surveillance, a matter unrelated to issues of health and mental health and within the jurisdiction of committees not represented in the underlying bill. The instructions are therefore not germane and the point of order is sustained. The motion is not in order.''.

Mr. HOEKSTRA appealed the ruling of the Chair.

The question being put, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. PALLONE moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. SNYDER, announced that the yeas had it.

Mr. HOEKSTRA objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 6, rule XX, and the call was taken by electronic device.

When there appeared

Yeas	223
Nays	186

¶25.34 [Roll No. 99]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶26.14)

TO A BILL CONFINED TO VOLUNTEERISM, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON EDUCATION AND LABOR, A MOTION TO RECOMMIT WITH INSTRUCTIONS PROPOSING TO AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, A MATTER WITHIN THE JURISDICTION OF THE COMMITTEE ON THE JUDICIARY AND THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On March 6, 2008, Mr. George MILLER of California, made a point of order against the motion to recommit with instructions, and said:

''Mr. Speaker, I raise a point of order that the motion to recommit contains nongermane instructions in violation of clause 7, rule XVI. The instructions in the motion to recommit address an unrelated matter within the jurisdiction of a committee not represented in the underlying bill.''.

Mr. LUNGREN of California, was recognized to speak to the point of order, and said:

''Mr. Speaker, it is unfortunate the gentleman has raised this point of order rather than allowing a straight up-or-down vote on the Senate-passed FISA legislation.

''Let me speak specifically to the point of order and why, in fact, this motion to recommit is in order.

''The underlying purpose of the germaneness rule is that it 'prevents the presentation to the House of propositions that might not reasonably be anticipated and for which it might not be properly prepared.' I cite to 8 Cannon, section 2993. That is clearly not the case here in that this body has dealt extensively with the subject matter of the Foreign Intelligence Surveillance Act. And, in fact, we were informed by the majority that we were to be prepared to vote on that this week.''.

Mr. George MILLER of California, was further recognized and said:

''Mr. Speaker, the scheduling of the House is not the subject of this point of order. I raised a point of order that the motion addresses the jurisdiction of committees not represented in the underlying bill. Neither the Judiciary Committee or the Intelligence Committee is represented in the underlying bill, not the schedule of the House.''.

Mr. LUNGREN of California, was further recognized and said:

''Mr. Speaker, despite the difference in titles of H.R. 2857 and H.R. 3773 relating to the motion, that is not controlling under Deschler-Brown, chapter 28, section 24. As a matter of fact, it refers to the fundamental purpose of the motion. The fundamental purpose of this motion does relate to H.R. 2857, as required by sections 935 and 936 of the House manual.

''The report on H.R. 2857 from the gentleman's committee states clearly in its statement of purpose of the bill found on page 57 of that report that the legislation seeks to emphasize, and I quote, 'the critical role of service in meeting the national priorities of emergency and disaster preparedness; and improves program integrity.' That is from the report on the bill from the gentleman's committee.

''In other words, the critical issue of homeland security provides the required nexus between the subject matters of H.R. 2857 and the motions as required under sections 935 and 936 of the House manual.

''Further, I would argue, it is clear that the subject matter requirements of section 935 and 936 of the House manual are satisfied. A specific section of the legislation brought to the floor by the gentleman's committee relating to 'Emergency and Disaster Preparedness' provides on page 71 of the gentleman's committee report that 'H.R. 2857 supports the role of service in addressing emergency and disaster preparedness.' These are the words from the gentleman's committee's report. 'In addition, this program may engage Federal, State, and local stakeholders to collaborate to achieve a more effective response to issue public safety, public health, emergencies and disasters.'.''.

Mr. George MILLER of California, was further recognized and said:

''Mr. Speaker, I insist upon my point of order. The gentleman again is speaking to the scheduling of the floor of the House. The bill, in its entirety, speaks to national voluntary service. The gentleman, I guess, is talking about the intelligence service. And the fact of the matter is, under the point of order there is nothing in this legislation within the jurisdiction of the committees, for the motion to recommit, of the Intelligence Committee or the Judiciary Committee, and I insist upon my point of order.''.

Mr. LUNGREN of California, was further recognized and said:

''I was attempting to specify the germaneness, quoting specifically from the language of the committee report

justifying support for this bill. I did not bring up public safety, public health, emergencies and disasters and effective response thereto. That is the premise contained in the bill and the committee report.

''Mr. Speaker, if we are to be able to respond to public safety, emergencies, and disasters, it does not limit it in the language of the gentleman's committee report to natural disasters. It therefore includes man-made disasters, of which we are very, very cognizant. And 9/11 is perhaps the greatest example. So the bill itself justifies its existence in that the individuals, under the ambit of the bill, to support responses for public safety, public health, emergencies, and disasters are affected in very specific ways by our capacity, our capacity, to determine beforehand what the nature of the disasters and emergencies would be and therefore allow us to array our individuals under this bill in concert, as is stated by the gentleman's report, to collaborate with Federal, State, and local stakeholders. In that way my amendment is very much germane to the main purpose of the bill and the specifics of the bill.

''Finally, the language of H.R. 2857 emphasizes the ability to deploy the National Civilian Community Corps to emergencies and disasters. It does not limit it to natural emergencies or disasters, therefore including terrorist attacks.''.

Mr. George MILLER of California, was further recognized and said:

''Mr. Speaker, I insist on my point of order. Again, had we been involved with the committees of jurisdiction that the gentleman is referring to, the bill would have been referred by the Parliamentarian to those committees, and it was not. And let me just inform the gentleman. I know he's been out for a couple of days and he comes back with great vigor, and I admire his arguments. But there is nothing within the programs of Teach for America or the Boys and Girls Club of America or the Big Brothers Big Sisters program or the YouthBuild or the National Council on Aging or the Senior Citizen Nutrition Program or the American Red Cross, there is nothing in those programs that require that they eavesdrop or wiretap anybody's phones before they can deliver their services. And there is nothing within the jurisdiction of this legislation or of this committee that deals with those matters, and there is nothing in this bill that deals with the matters within the jurisdiction of those committees. And I insist upon my point of order.''.

Mr. LUNGREN of California, was further recognized and said:

''Mr. Speaker, the gentleman says, with some humor in his voice, that we ought not to be considering the question of wiretapping. That is not the question we bring before us today. The question we bring before of us today and why this is germane is whether or not we have the ability to listen in on those who would kill us and therefore prepare for these disasters before they occur and, more than that, prevent them.''.

Mr. George MILLER of California, was further recognized and said:

''Mr. Speaker, the gentleman from California is required to speak to the point of order.''.

Mr. LUNGREN of California, was further recognized and said:

''Mr. Speaker, to suggest that intelligence gathered to prevent disaster has nothing to do with the ability of those we are asking under this bill to respond to disaster reminds one of the comment in literature years ago when one was confronted with the incongruity of the law and that person responded by saying: The law, sir, is an ass.

''I would not suggest we are at that point here, but I would suggest this: for anyone to say that, to blind ourselves to the information that would allow us to prevent disasters and prepare for the disasters, to say that that is irrelevant to the debate today shows how irrelevant the debate today is to the needs of the people of the State of California, the Nation, and, frankly, our allies. It is germane, Mr. Speaker.''.

Mr. George MILLER of California, was further recognized and said:

''Mr. Speaker, I insist upon my point of order.

''And I appreciate that perhaps there's some confusion on the other side of the aisle between the Big Brothers of this program and Big Brother that you're thinking about.

''I insist upon my point of order.''.

The SPEAKER pro tempore, Mr. PASTOR, sustained the point of order, and said:

''As the Chair most recently ruled on March 5, 2008, the instructions in the motion to recommit address a matter unrelated to the issues addressed in the underlying bill, and within the jurisdiction of committees not represented in the underlying bill. The instructions are therefore not germane, and the point of order is sustained. The motion is not in order.''.

Mr. LUNGREN of California, appealed the ruling of the Chair.

The question being stated,

Will the decision of the Chair stand as the judgment of the House?

Mr. George MILLER of California, moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. PASTOR, announced that the yeas had it.

Mr. LUNGREN of California, demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 221 / Nays 191

¶26.15 [Roll No. 107]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PRIVILEGES OF THE HOUSE

(¶28.37)

A RESOLUTION ADDRESSING A LEGISLATIVE SENTIMENT DOES NOT PRESENT A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On March 11, 2008, Mr. PRICE of Georgia, rose to a question of the privileges of the House and submitted the following resolution:

Whereas in an interview published by National Journal Magazine on March 7, 2008, John Brennan, a foreign policy adviser to Sen. Barack Obama (D-IL) and former CIA official who once served as head of the National Counterterrorism Center, stated, ''There is this great debate over whether or not the telecom companies should in fact be given immunity for their agreement to provide support and cooperate with the government after 9/11 . . . I do believe strongly that they should be granted that immunity, because they were told to do so by the appropriate authorities that were operating in a legal context, and so I think that's important . . . And I know people are concerned about that, but I do believe that's the right thing to do . . . I do believe the Senate version of the FISA bill addresses the issues appropriately;'';

Whereas a bipartisan group of 25 state attorneys general recently wrote a letter to House of Representatives leaders in support of the Senate bill's passage, stating in part ''A bipartisan majority of the United States Senate recently approved S. 2248 . . . But until it is also passed by the House of Representatives, intelligence officials must obtain FISA warrants every time they attempt to monitor suspected terrorists in overseas countries. Passing S. 2248 would ensure our intelligence experts are once again able to conduct real-time surveillance. . . . With S. 2248 still pending in the House of Representatives, our national security is in jeopardy;'';

Whereas Ret. Admiral Bobby R. Inman, former director of the National Security Agency and deputy director of the CIA told the Austin-American Statesman last month that Americans are more vulnerable without the Protect America Act and ''the only way for the country to prevent future terrorists attacks is to increase its ability to eavesdrop on their communication;'';

Whereas Glenn Sulmasy, a Harvard national security expert, wrote in the February 15 edition of The Tampa Tribune that ''the global technologies of cell phones, computers, the internet, and other such means of communication—which were not, and could not have been, envisioned by the drafters of FISA in the 1970s—have changed the way information moves around the world. . . . Herein lie the gaps meant to be filled'' by the Protect America Act of 2007;

Whereas in its bipartisan findings the Senate Select Committee on Intelligence concluded in Oct. 2007 that ''electronic communication service providers acted on a good faith belief that the President's program, and their assistance, was lawful;'';

Whereas 20 Senate Democrats supported final passage of S. 2248, including Senate Intelligence Chairman Jay Rockefeller (D–WV) and Kent Conrad (D–ND), Chairman of the Senate Budget Committee;

Whereas on February 12, 2008, after passage of S. 2248, the Senate amended the bill H.R. 3773 with the text of S. 2248 and sent the amended bill back to the House of Representatives for its consideration;

Whereas Sen. Kent Conrad (D–ND) wrote in a Feb. 28 letter to the editor of The Fargo Forum, ''The FISA law needed reform to account for modern information technology, current patterns of communication and the nature of the threats facing our country. . . . [The bipartisan Senate bill] does include strong privacy safeguards and considerable judicial oversight to ensure that our fundamental freedoms are protected. . . . Leaving [telecommunications companies] completely subject to civil litigation could cause problems in vital intelligence collection in the future;'';

Whereas 21 House of Representatives Democrats expressed support for the bipartisan Senate FISA bill in a Jan. 28 letter to Speaker Pelosi stating that, ''we have it within our ability to replace the expiring Protect America Act by passing strong, bipartisan FISA modernization legislation that can be signed into law and we should do so—the consequences of not passing such a measure could place our national security at undue risk;'';

Whereas in an editorial published by the Charleston Post and Courier on February 29, 2008, House of Representatives Democrat leadership was described as ''indeed causing a potentially dangerous gap in the nation's defenses'' and ''creating an unnecessary cloud of uncertainty in a critical area of intelligence operations where there should be great clarity.''; and

Whereas the failure of the House of Representatives to expeditiously consider the bipartisan Senate-passed Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 has brought discredit to the House of Representatives: Now, therefore, be it

Resolved, That the House of Representatives should immediately consider a motion to concur in the Senate amendment to the bill, H.R. 3773.

The SPEAKER pro tempore, Mr. CLAY, ruled that the resolution submitted did not present a question of the privileges of the House under rule IX, and said:

''Under the precedents recorded in section 702 of the House Rules and Manual, the resolution addresses a legislative sentiment and not a question of the privileges of the House.''.

Mr. PRICE of Georgia, appealed the ruling of the Chair.

The question being stated,

Will the decision of the Chair stand as the judgment of the House?

Mr. HOYER moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. ALTMIRE, announced that the yeas had it.

Mr. PRICE of Georgia, demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	218
	Nays	192
	Answered present	1

¶28.38 [Roll No. 116]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PRIVILEGES OF THE HOUSE

(¶29.9)

A RESOLUTION ALLEGING A WILLFUL VIOLATION OF CLAUSE 2(A) OF RULE XX BY THE SPEAKER AND OTHER MEMBERS OF THE MAJORITY IN HOLDING A VOTE OPEN BEYOND A REASONABLE PERIOD OF TIME FOR THE SOLE PURPOSE OF CIRCUMVENTING THE WILL OF THE HOUSE, AND DIRECTING BOTH THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT AND THE SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007, TO INVESTIGATE AND REPORT ON SUCH WILLFUL VIOLATIONS, AND RESOLVING THAT THE VOTE IN QUESTION BE VACATED, PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE.

On March 12, 2008, Mr. BOEHNER, rose to a question of the privileges of the House and submitted the following resolution (H. Res. 1039):

Whereas on January 5, 2007, the House of Representatives adopted a rule of the House amending clause 2(a) of rule XX to include that, ''A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.'';

Whereas on the evening of March 11, 2008, the Speaker pro tempore repeated an announcement regarding enforcement of such rule, stating ''An alleged violation of clause 2(a) of rule XX may subject the vote to collateral challenge in the form of a question of the privileges of the House pursuant to rule IX.'';

Whereas a press release dated October 7, 2005 from then Minority Leader Nancy Pelosi stated, ''Democrats have proposed guidelines for how we think the House of Representatives should operate, a Minority Bill of Rights.'' Included in this document is the declaration that ''No vote shall be held open in order to manipulate the outcome. When we take back the People's House, we will heed that declaration.'',

Whereas H. Res. 1031 provided that ''House Resolution 895, amended by the amendment printed in the report of the Committee on Rules accompanying this resolution, is hereby adopted.''

Whereas on March 11, 2008 the publication Roll Call reported, ''Republicans nearly defeated the measure on a procedural maneuver, but House leaders held the vote open for at least 10 additional minutes to turn a handful of Democrats—sealing the win with the votes of Reps. Emanuel Cleaver (D–Mo.), Sanford Bishop (D–Ga.), G.K. Butterfield (D–N.C.) and Bart Stupak (D–Mich.). With their support, the bill was allowed to come to the floor.'' (''House Passes Ethics Bill; Pelosi Hails Victory,'' Roll Call, March 11, 2008.);

Whereas on March 11, 2008 the publication The Politico reported, ''Republicans, backed by 18 Democrats, thought they had won a parliamentary vote prior to consideration of the new ethics office, a victory that would have derailed [sic] But Speaker Nancy Pelosi (D–Calif.) and the Democratic leadership held the vote open for 16 minutes beyond the allotted 15-minute deadline, and in that period, convinced several Democrats to switch their votes.'' (''New Ethics Office Approved by House After Controversial Quote,'' The Politico, March 11, 2008.);

Whereas on March 11, 2008 The Politico further reported, ''In response to GOP manipulation of votes during their years of control, Pelosi promised at the beginning of the 110th Congress that floor votes would only last 15 minutes, and 'no vote shall be held open to manipulate the outcome.' Pelosi, however, appeared to go back on that promise during the previous question vote, which was open for a total of 31 minutes before it was gaveled closed.'' (''New Ethics Office Approved by House After Controversial Quote,'' The Politico, March 11, 2008);

Whereas on March 11, 2008 The Politico further reported, ''The most vocal Democratic opponent of the OCE, Rep. Neil Abercrombie (D–Hawaii), who made an impassioned speech on the floor urging his colleagues to vote against the measure, insisted that the opposition had actually won the parliamentary vote, regardless of the final outcome. 'We did win,' Abercrombie declared afterwards. 'This thing is totally discredited.' '' (''New Ethics Office Approved by House After Controversial Quote,'' The Politico, March 11, 2008.);

Whereas on March 12, 2008 Associated Press reported, ''Republicans yelled in protest as Democrats held the 15-minute vote open for 27 minutes while Democratic leaders urged holdouts in the party to support the party position.'' (''House Approves Ethics Panel,'' Associated Press, March 12, 2008.);

Whereas on March 11, 2008, Roll Call reported, '' 'There are still plenty of people trying to keep it from coming to the floor,' said one Democratic lawmaker, who spoke in advance of the vote on the condition of anonymity, fearing reprisals from party leadership. The Member added that colleagues expressed a 'lot of unhappiness', as many acknowledged they would have to vote for the bill once it reached the floor.'';

Whereas at 9:31 p.m. the vote on Ordering the Previous Question on H. Res. 1031, was ordered and was to be a 15-minute vote;

Whereas that vote was held open for 27 total minutes;

Whereas 413 Members of the House, which was the total number of Members present and voting, had registered their votes after 21 minutes had elapsed;

Whereas no new Member of the House voted after 21 minutes into the vote who had not previously recorded their vote;

Whereas at 21 minutes elapsed, the vote was 204 yeas and 209 nays, the motion failing;

Whereas for approximately the next 5 minutes, no further votes were cast or changed and the previous question vote was held open for the sole purpose of changing the outcome of the vote;

Whereas during the final moments of Roll Call Vote 121, after conversing with Democratic leaders in full view of the House, three Democratic Members changed their votes from Nay to Aye;

Whereas Speaker Nancy Pelosi left the floor during this time and returned with Representative Bart Stupak who changed his vote from a no to a yes;

Whereas Speaker Nancy Pelosi and Majority Whip James Clyburn approached Representatives Sanford Bishop and Emanuel Cleaver on the Democratic side of the aisle and had them change their votes from a no to a yes;

Whereas according to Speaker Nancy Pelosi's document entitled ''A New Direction for America,'' page 24 states that ''floor votes should be completed within 15 minutes with the customary 2 minute extension to accommodate members' ability to reach the House Chamber to cast their votes. No vote shall be held open in order to manipulate the outcome.'';

Whereas the result of the 3 Democratic vote changes, after 12 minutes of extended vote time and pressure from Democratic leadership, manipulated the outcome and changed the result from 204 yeas and 209 nays, the motion failing, to 207 yeas and 206 nays, the motion passing; and

Whereas a Democratic Member approached Members and staff of the minority following the announced outcome of the vote and revealed that, ''Deals were made to get Cleaver and Bishop;'': Now, therefore, be it

Resolved, That

(1) the House denounces this action in the strongest terms possible, rejects the practice of holding votes open beyond a reasonable period of time for the sole purpose of circumventing the will of the House, and directs the Speaker to take such steps as necessary to prevent any further abuse;

(2) The votes on ordering the previous question and adoption of House Resolution 1031 are hereby vacated;

(3) the Committee on Standards of Official Conduct is directed to investigate without further delay violations of House rules by Speaker Nancy Pelosi and other Members of the Democratic leadership and report its findings and recommendations to the House, including a recommendation regarding the appropriate actions for the Speaker's activities; and,

(4) The Select Committee to Investigate the Voting Irregularities of August 2, 2007, is hereby directed to investigate and include in the report its findings and resulting recommendations concerning the actions of the Speaker, concerning the time the vote was held open and the changes in votes cast by members, resulting in passage of the previous question vote to H. Res. 1031 on March 11, 2008.

The SPEAKER pro tempore, Mr. TIERNEY, ruled that the resolution submitted did present a question of the privileges of the House under rule IX, and said:

''The resolution presents a question of the privileges of the House.''.

Mr. MCGOVERN moved to lay the resolution on the table.

The question being put, viva voce,

Will the House lay the resolution on the table?

The SPEAKER pro tempore, Mr. TIERNEY, announced that the yeas had it.

Mr. BOEHNER demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	215
	Nays	193

¶29.10 [Roll No. 125]

So, the motion to lay the resolution on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PERSONAL PRIVILEGES

(¶29.13)

A MEMBER ROSE TO A QUESTION OF PERSONAL PRIVILEGE UNDER RULE IX ON THE BASIS OF MEDIA CHARACTERIZATIONS OF HIS OFFICIAL CONDUCT.

On March 12, 2008, Mr. HASTINGS of Washington, rose to a question of personal privilege and said:

''Mr. Speaker, no one in this House takes more seriously than I do the rules governing confidentiality of matters before the House Ethics Committee.

''Each of us privileged to serve on the committee signs an oath pledging not to disclose information related to our work in the committee except as authorized under our committee rules.

''During nearly 8 years of service on the Ethics Committee, including 2 years as the chairman, I have never found it necessary to disclose committee documents or any other privileged information. Mr. Speaker, that changed yesterday when it became clear that the Democrat leadership would, indeed, force Members to vote on a proposed independent ethics entity.

''You see, I knew, and Chairwoman Stephanie TUBBS JONES knew, something that the other Members of this House did not know. Several months ago, we had been advised by the nonpartisan, professional attorneys at the Ethics Committee that they believed the proposed independent ethics entity would infringe upon Members' due process protections under the rules of the House and that it would seriously hamper the Ethics Committee's ability to carry out its important responsibilities.

''When the ranking member of the bipartisan task force, Mr. SMITH of Texas, sent a letter asking for our committee's official comments on Representative CAPUANO's proposal, I took his request to Chairwoman TUBBS JONES and asked her to prepare a formal response with me to the ranking member of that task force. I did so because I felt strongly that the proposed entity would so greatly impact the work of the Ethics Committee that it would be irresponsible, Mr. Speaker, irresponsible not to share with task force members our official views of this plan.

''Last night, in a Dear Colleague letter to every Member of this House, that was printed in the CONGRESSIONAL RECORD, it was printed in Roll Call, it was printed in other publications, Representative TUBBS JONES has attempted to rewrite the history on this issue.

''For reasons that I have trouble fathoming, she now claims, and I quote, Mr. Speaker, 'Both Representative HASTINGS and I agreed that the Ethics Committee could not and should not give advice to the committee charged by House leadership with reviewing the ethics process itself.'.

''Mr. Speaker, nothing could be further from the truth. I could not possibly have stated more clearly to Mrs. TUBBS JONES my desire to respond fully and jointly to Ranking Member SMITH's request for guidance on how the task force proposal would affect our committee.

''Now I recognize the difficulty that she must have explaining to her colleagues why she did not believe that they should be made aware of the concerns expressed by our nonpartisan attorneys on the committee. But, Mr. Speaker, those attorneys don't work for her and they don't work for me. They work for every Member of this House. So, I don't understand, I didn't understand then and I don't understand now, why my distinguished colleague, the gentlelady from Ohio, sought to keep that information from every Member of the House, but she did. And I do not stand by and permit her to call into question my integrity on setting that record straight, as I did so with a letter I sent out to every Member, along with the e-mail of the attorneys on their advice on that issue.

''Now, Mr. Speaker, Members should be advised that this is not the first time that I have had to set the record straight following ill-considered public comments by Representative TUBBS JONES. Last June, she issued a press release declaring that the Ethics Committee would empanel an investigative subcommittee into the matter of Representative William JEFFERSON. Under the committee's rules, Representative TUBBS JONES had no authority to issue such a statement and lacked the authority to establish such a subcommittee. She not only knew that such an action would require a bipartisan vote of the committee, but she also knew that the committee had never voted on the matter. And she knew, Mr. Speaker, that I had pressed her for months to reestablish the Jefferson subcommittee which had lapsed at the end of the last Congress before it completed its work. And I said so, Mr. Speaker, when she issued that because she did not consult with me and ask me to give permission for her to release that statement. She simply did not do so. So, once again, I cannot fathom her reason for making such an inaccurate and irresponsible statement as I mentioned earlier.

''Mr. Speaker, I make no apology to this House for insisting that Members benefit from the advice and counsel of the skilled attorneys at the Ethics Committee before voting on a proposed independent entity. After all, Mr. Speaker, this affects them. I'm a Member, also, of the Rules Committee. And at the Rules Committee 2 weeks ago, when we had testimony on this issue, I expressed my concern then as to what would come of this outside entity.

''So, Mr. Speaker, I resent the claim by Representative TUBBS JONES that I have violated the rules of the House and the Ethics Committee in this manner. As she no doubt intended, Representative TUBBS JONES' false allegations have now made their way into the news, bringing further discredit to the House. But most disturbing, Mr. Speaker, is her public threat to use her position as chairman of the House Ethics Committee to bring sanctions against me. Such a threat can only be motivated by a desire to intimidate

and embarrass, while distracting attention from her decision to keep every Member of this House from receiving information that I think every Member deserved to have before we voted on that proposal last night.

''Mr. Speaker, I think her action in calling into question and impugning my reputation, and what she did last night, is wrong, and I think she failed in her effort of trying to do that.

''So I rise today, point of personal privilege, to point out the history of this, and my position, and the reason why I felt that every Member of this House had to have this important information, notwithstanding the fact that we had a very short time frame to even debate the matter at hand.''.

PRIVILEGES OF THE HOUSE

(¶29.16)

A RESOLUTION DIRECTING THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO INVESTIGATE ALLEGED VIOLATIONS OF CLAUSE 16 OF RULE XXIII (CODE OF OFFICIAL CONDUCT) BY A MEMBER AND TO REPORT ITS FINDINGS TO THE HOUSE PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE.

On March 12, 2008, Mr. BOEHNER, rose to a question of the privileges of the House and submitted the following resolution (H. Res. 1040):

Whereas on June 13, 2007, the publication The Politico reported, ''Democratic leaders gave in to Republican demands that lawmakers be allowed to challenge individual member-requested projects from the final version of each appropriations bill.''

Whereas on November 15, 2007, Representatives Jack Kingston and Frank Wolf introduced H. Con. Res. 263, to establish a Joint Select Committee on Earmark Reform, and for other purposes;

Whereas on March 6, 2008, The Hill reports in ''Obey Criticizes Kingston on earmarks'' that ''Kingston said Obey has been 'very irritated' with his push for reform.'';

Whereas on March 5, 2008, House Appropriations Chairman David Obey sent a Dear Colleague to Republican Members stating ''In light of the continuing discussion on earmarks in the Republican Conference, the Appropriations Committee needs to determine how it would proceed.''

Whereas on March 6, 2008, The Hill reports in ''Task Force Looking Beyond Earmarks'' that ''Obey issued a memo to Republicans in multiple-choice format asking them to check one of two boxes, stating whether they believed in a one-year moratorium and therefore would not be submitting earmark requests, or did not believe in a moratorium and would be submitting requests. Obey spokeswoman Kristin Brost said Obey called the memo his 'anti-hypocrisy memo, aimed at House Minority Leader John Boehner's (R–Ohio) repeated calls for a moratorium.' '';

Whereas the Chairman of the Appropriations Committee Dave Obey stated in said letter: ''Because it is important for the Committee to move ahead with bills in a timely fashion, I will assume that any Member not returning this form by March 19, 2008 wishes to see Congressional earmarks discontinued and will therefore be submitting no request for fiscal year 2009.''

Whereas House Rule XXIII Clause 16, states that a Member may not condition the inclusion of language to provide funding for a congressional earmark on any vote cast by another Member.

Whereas the Chairman of the Appropriations Committee, Dave Obey, has conditioned the receipt of an earmark from the Committee on Appropriations on a Member's opposition to a moratorium on earmarks: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct is directed to investigate without further delay violations of House rules by Representative Dave Obey and report its findings and recommendations to the House, including a recommendation regarding the appropriate action for Representative Obey's violations.

The SPEAKER pro tempore, Mr. PASTOR, ruled that the resolution submitted did present a question of the privileges of the House under rule IX, and said:

''The resolution presents a question of privilege.''.

Mr. MCGOVERN moved to lay the resolution on the table.

The question being put, viva voce,

Will the House lay the resolution on the table?

The SPEAKER pro tempore, Mr. PASTOR, announced that the nays had it.

Mr. MCGOVERN demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 219 / Nays 193

¶29.17 [Roll No. 128]

So, the motion to lay the resolution on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PRIVILEGES OF THE HOUSE

(¶30.5)

A RESOLUTION ADDRESSING A LEGISLATIVE SENTIMENT DOES NOT PRESENT A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On March 13, 2008, Mr. PRICE of Georgia, rose to a question of the privileges of the House and submitted the following resolution:

Whereas on December 11, 2007, a bipartisan group of 21 State attorneys general wrote to Senate Majority Leader Reid and Senate Minority Leader McConnell regarding the FISA Amendments Act of 2007 (S. 2248);

Whereas this bipartisan group of State attorneys general represents the States of Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin;

Whereas the State attorneys general stated that protecting communications carriers from ''unprecedented legal exposure is essential to domestic and national security. State, local and federal law enforcement and intelligence agencies rely heavily on timely and responsive assistance from communications providers and other private parties; indeed, this assistance is utterly essential to the agencies' functions. If carriers and other parties run the risk of facing massive litigation every time they assist the government or law enforcement, they will lack incentives to cooperate, with potentially devastating consequences for public safety'';

Whereas on February 5, 2008, the Director of the Federal Bureau of Investigation testified before the Senate Select Committee on Intelligence that ''in protecting the homeland . . . it's absolutely essential we have the support, willing support of the communications carriers'';

Whereas in the same hearing, Director Mueller further stated ''[m]y concern is that if we do not have this immunity, we will not have that willing support of the communications carriers'';

Whereas on March 4, 2008, a bipartisan group of 25 State attorneys general wrote to the Speaker of the FISA Amendments Act of 2007;

Whereas this bipartisan group of State attorneys general represents the States of Alabama, Alaska, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Maryland, Michigan, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and West Virginia;

Whereas the State attorneys general stated they ''are our states' chief law enforcement officials and therefore responsible for taking whatever action is necessary to keep our citizens safe'';

Whereas the State attorneys general also stated ''[a] bipartisan majority of the United States Senate recently approved S. 2248. But until it is also passed by the House of Representatives, intelligence officials must obtain FISA warrants every time they attempt to monitor suspected terrorists in overseas countries. Passing S. 2248 would ensure our intelligence experts are once again able to conduct real-time surveillance. As you know, prompt access to intelligence data is critical to the ongoing safety and security of our nation.'';

Whereas on February 12, 2008, after passage of S. 2248, the Senate amended the bill H.R. 3773 with the text of S. 2248 and sent the amended bill back to the House for its consideration;

Whereas the State attorneys general concluded that with ''S. 2248 still pending in the House of Representatives, our national security is in jeopardy.'';

Whereas all Members of the House of Representatives have a responsibility to provide the intelligence community and Federal law enforcement with all the necessary and appropriate tools to keep Americans and the homeland safe;

Whereas all Members of the House of Representatives have a responsibility to ensure they are not impeding the efforts of State and local law enforcement to use all the necessary and appropriate tools to keep Americans and the homeland safe;

Whereas according to the calendar distributed to Members by the House majority, the House of Representatives is scheduled to be in recess during the two-week period beginning on March 17, 2008; and

Whereas it would bring discredit to the House of Representatives to adjourn for two weeks without considering the amendments to H.R. 3773 now pending before the House: Now, therefore, be it

Resolved, That the House of Representatives—

(1) should immediately consider a motion to concur in the Senate amendment to the bill, H.R. 3773; and

(2) should not adjourn for the Easter District Work Period prior to consideration of a motion to concur in the Senate amendment to the bill, H.R. 3773.

The SPEAKER pro tempore, Mrs. TAUSCHER, spoke and said:

''Does the gentleman from Georgia wish to be heard on whether the resolution constitutes a question of the privileges of the House?''.

Mr. PRICE of Georgia, was recognized and said:

''Madam Speaker, we are now 27 days, 27 days into a unilateral disarmament. We are not doing our job in the House of Representatives. We are not fulfilling our oath, and we are not protecting the American people. This brings discredit on the House of Representatives.

''The underlying bill simply allows the American intelligence community to make certain that they are able to listen or surveil on terrorists in a foreign land speaking to another terrorist or suspected terrorist in a foreign land.

''My constituents don't understand why the House isn't acting on this. They believe the House is bringing discredit on the Nation. Americans don't understand.

''The Senate has acted responsibly. It is imperative that the majority of the House be given an opportunity to vote on this issue. The majority of the House has said that they would pass this bill. Not bringing this bill to the floor for a vote brings discredit and abrogates our responsibility as Representatives of the United States of America.

''I urge the Speaker and I urge my colleagues to allow this to come to the floor for a vote.''.

The SPEAKER pro tempore, Mrs. TAUSCHER, ruled that the resolution submitted did not present a question of the privileges of the House under rule IX, and said:

''As the Chair ruled on March 11, 2008, under the precedents recorded in section 702 of the House Rules and Manual, the resolution addresses a legislative sentiment and not a question of the privileges of the House.''.

Mr. PRICE of Georgia, appealed the ruling of the Chair.

The question being stated, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. SCOTT of Virginia, moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mrs. TAUSCHER, announced that the yeas had it.

Mr. PRICE of Georgia, objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 6, rule XX, and the call was taken by electronic device.

When there appeared { Yeas ..... 222 / Nays 192

¶30.6 [Roll No. 135]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶41.20)

CLAUSE 2(A) OF RULE XX, WHICH STATES THAT A RECORD VOTE BY ELECTRONIC DEVICE MAY NOT BE HELD OPEN FOR THE SOLE PURPOSE OF REVERSING THE OUTCOME OF SUCH VOTE, DOES NOT ESTABLISH A POINT OF ORDER.

On April 15, 2008, Mr. WESTMORELAND made a point of order and said:

''I make a point of order that the electronic vote just completed violated clause 2(a) of rule XX which provides in part 'a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote'.''.

The SPEAKER pro tempore, Ms. JACKSON-LEE of Texas, spoke and said:

''As the Chair Advised on March 11, 2008, a challenge to the Chair's actions under clause 2 of rule 20 may be raised collaterally.''.

POINT OF ORDER

(¶58.6)

PURSUANT TO SECTION 426(B)(4) OF THE CONGRESSIONAL BUDGET ACT OF 1974, A MEMBER WHO MAKES A POINT OF ORDER UNDER SECTION 426(A) OF THE ACT AND SATISFIES THE THRESHOLD BURDEN SPECIFIED IN SECTION 426(B)(2) OF THE ACT BY CITING LANGUAGE IN THE RESOLUTION THAT WAIVES THE APPLICATION OF SECTION 425 OF THE ACT IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

PURSUANT TO SECTION 426(B)(3) OF THE CONGRESSIONAL BUDGET ACT OF 1974, AS DISPOSITION OF A POINT OF ORDER RAISED UNDER SECTION 426(A) OF THE ACT, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE PROPOSITION THAT IS THE OBJECT OF THE POINT OF ORDER.

On May 14, 2008, Mr. FLAKE made a point of order against consideration of the resolution, and said:

''Mr. Speaker, I raise a point of order against House Resolution 1189 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution contains a waiver of all points of order against consideration of the conference report which includes a waiver of section 425 of the Congressional Budget Act which causes a violation of section 426(a).''.

The SPEAKER pro tempore, Mr. PASTOR, responded to the point of order, and said:

''The gentleman from Arizona [MR. FLAKE] makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

''In accordance with section 426(b)(2) of that Act, the gentleman has met the threshold burden to identify specific language in the resolution on which the point of order is predicated.

''Pursuant to section 426(b)(3) of the Act, after debate, the Chair will put the question of consideration, to wit: 'Will the House now consider the resolution?'.''.

Mr. FLAKE was further recognized and said:

''I raise this point of order realizing that it is a bit of a stretch. The reason that we have this point of order in law is to guard against unfunded mandates being levied on the States. In this case, there are a lot of unfunded mandates being heaped upon taxpayers. I realize, as I said, this is a stretch. But I have to do this today because the rule that is before us does not allow anybody opposed to the bill to claim time in opposition to the bill.

''Now how is it that a bill of this import, a bill that will spend over the next 10 years about $300 billion, is not important enough to allow those who are opposed to the bill to claim time in opposition to it? Instead, the structured rule before us today allows time to be split between the majority and the minority. Now those who will be controlling that time are people who are in support of the bill. How is it that we can discuss a bill this large, this important, that spends this much money, and that heaps this kind of burden on the taxpayer, yet again, without having a real discussion?

''When we have a bill before the House, we have time called 'general debate.' In this case, general debate is between those in the majority who support the bill and those in the minority who support the bill. Now how is that debate? Why is it that the Rules Committee can't see fit to actually allow people who are opposed to the bill to claim time in opposition to it?

''With that, I would love to hear an explanation from the Rules Committee why we have a structured rule that does this.''.

Mr. CARDOZA was recognized to speak to the point of order and said:

''This point of order is about whether or not to consider the rule and ultimately the underlying conference report. In my opinion, it is simply an effort to try to kill this bill without any debate, without an up-or-down vote on the conference report itself. It is nothing more than procedural roadblocks, something the other side has been using a fair amount recently. I don't believe it will work.

''The gentleman has talked about the fact that he is not able to speak in opposition. The gentleman had an hour's worth of debate the other day on a motion to recommit. It is also my understanding that the chairman is working with the opposition to allow them time to discuss the bill within the rules that were set up.

''This conference report is far too important, Mr. Speaker, to be blocked by a parliamentary tactic. We have

worked on this bill for nearly 2 years and have accomplished what many of us thought was an impossible feat by bringing it to the floor.

''Make no mistake about it. The Republican obstruction will ensure that a farm bill will not pass during this Congress. So despite whatever roadblocks the other side tries to use to stop this bill, we will stand up for America's hardworking farmers, for the hungry and for the millions of other Americans who will benefit from this farm bill.

''We must consider this rule, and we must pass this important conference report without further delay.

''Mr. Speaker, it is my understanding I have the right to close. But in the end, I will urge my colleagues to vote 'yes' to consider this rule.''.

Mr. FLAKE was further recognized and said:

''Again, I realize this bill has been in discussion for a couple of years. And I will come to that a little later as we talk about why earmarks had to be airdropped into the bill at the last minute. If we have been discussing this bill for 2 years, then couldn't we actually discuss these earmarks that were to be added to the bill instead of airdropping them into the conference report when nobody in the House or nobody in the Senate had even seen them? So it is hardly a defense to say that we have been discussing this for 2 years, nor is it a reason to deny those who are opposed to the bill an opportunity to actually claim time in opposition.

''Let me read from the House rules. If the floor manager for the majority and the floor manager for the minority both support the conference report or a motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate or Resident Commissioner who opposes the conference report or motion on demand of that Member, Delegate or Resident Commissioner.

''We waived that. And we are not doing it. And let me tell you why I think that is the case. Now if I were supporting this bill, and I had been touting this bill as some big reform to our farm programs, I would flat be plumb embarrassed to bring this bill to the floor in its current form. I would be embarrassed.

''What has got most of the attention, the problem that we all note, that everybody across the country realizes, is how in the world can we have a situation where multimillionaire farmers are collecting subsidies courtesy of the taxpayer?

''And the real effort in here, what the President wanted, what others wanted, and what many of us here in the House argued for, was to put a cap on how much income you can have and still receive subsidies. The President suggested $200,000 adjusted gross income. Remember, adjusted gross income is your income minus expenses. All of us here collect a salary of about $169,000. By the time we deduct things for mortgage interest, medical expenses and charitable contribution, it brings that down by at least one-third, maybe even one-half. Under this legislation, a farm couple can have farm income and nonfarm income totaling $2.5 million and still receive direct payments under this legislation.

''Now, if I were bringing a bill to the floor and had touted this bill as reforming, man, I would want to hide that as well. I would not want somebody to be able to stand up and say, how is it that a multimillionaire farm couple can still collect subsidies from the taxpayers? So I commend the Rules Committee and those who are in support of the bill for actually putting a rule together that minimizes opposition that can be raised and that the only way people can stand up and oppose and be guaranteed time in opposition is to use a maneuver like raising a point of order against the bill.

''I should mention there are other problems with this and other reasons why this rule should not go forward. We are waiving PAYGO rules. Now one thing the majority said when they came into power is we will not waive PAYGO. We are going to live by PAYGO. When we give money out, we have to make sure that that many money is in the Treasury or we won't do it.

''This waives PAYGO because there is simply no way you can be in compliance with PAYGO and pass a $300 billion farm bill. And in this case, the writers of the legislation did something very creative. They actually went baseline shopping. What PAYGO says is that you have to take the current baseline, the most current baseline of spending, and total up your spending in the bill based on that current baseline.

''Instead, what the authors of this legislation did was said, oh, let's go to last year's baseline because we spent less money then and it means we can spend more money in this legislation. Baseline shopping. It is as if I were to say, I don't want to pay so much in taxes this year. So I am going to use last year's wages that I was paid, and I am going to report that instead. Now if I did that, I would be thrown in jail. But we are allowed to do this here. We are allowed to say, we will take whatever baseline we want as long as it allows us to spend more money in the legislation. And then when the bill comes to the floor, we will just waive the rule that required us to be honest in terms of bringing legislation that complies with PAYGO.

''I would love an explanation from the Rules Committee as to why PAYGO was waived in this regard.''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, I am happy to respond to my friend from Arizona with regard to the PAYGO issue, even though that is going to be addressed in the rule and not in this motion that he has brought forward now.

''I didn't raise a point of order in your motion so you can have plenty of time to speak.

''Let me tell you also that the chairman and the ranking member have, in my understanding, provided 10 minutes to both the Republic and Democratic opposition to this bill out of their time today. So we will be complying with the rules of the House. It is my understanding there will be 20 minutes in opposition.

''With regard to PAYGO, the Senate and the House have adopted different rules. In the 1990s when the House and Senate had statutory PAYGO, both Chambers had the same rules with regard to PAYGO. The House rules talk about one issue with PAYGO. The Senate rules with another.

''In this rule, we have tried to reconcile, we started this bill and actually passed it in a conference report, or we passed it out in chief from the Agriculture Committee to this floor and to a conference committee in 2007. That work was not completed in 2007, and thus we have this bill on the floor today.

''There are many reasons why this bill didn't get finished in 2007. But because we have different rules in the House and Senate, we have decided that in order to make this bill work and achieve a conference report that we can bring to this floor that we will be discussing this further as we discussed the rule. But we have dealt with that in the rule.''.

Mr. FLAKE was further recognized and said:

''I will gladly yield to my colleague from California on the Rules Committee for a question.

''Did we waive the PAYGO rules in this rule?''.

Mr. CARDOZA was further recognized and said:

''We have accommodated the Senate PAYGO rules as we have moved forward. And it is my opinion that this is a technical situation because we started this bill and passed this bill off the floor in 2007.''.

Mr. FLAKE was further recognized and said:

''Reading from the House rules after the beginning of a new calendar year——''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, I raise a point of order.

''I believe we are supposed to be talking about the unfunded mandates in this bill. If the gentleman would like to talk about the PAYGO rules, we should talk about this when we bring up the rule which that is germane to.''.

The SPEAKER pro tempore, Mr. PASTOR, spoke and said:

''The gentleman should confine his remarks to the question of order.''.

Mr. FLAKE was further recognized and said:

''I can well understand why the other side does not want to talk about PAYGO and why I should confine this debate to unfunded mandates because PAYGO was, in fact, waived here. PAYGO was waived. And were it not waived, it would be subject to a point

of order, the same point of order that the gentleman is lodging against this debate right now. So I can understand that. And I guess we will have to go with the flow.

''There is another point of order that will be raised shortly with regard to the waiver of the earmark rules that we have in place as well.

''So let me get back. This is an unfunded mandate on the taxpayers, of course. According to the Environmental Working Group, the Federal Government handed out $13.4 billion in farm subsidies to 1.4 million recipients, $11.2 billion of which related to various commodity support programs, programs that the underlying bill simply does not change.

''The taxpayers have a huge unfunded mandate here that we are going to be paying off for a very, very long time.''.

Mr. KIND was recognized to speak to the point of order and said:

''There is one, I think, serious concern that many of us who have been advocating reform under the commodity title, the so-called commodity subsidy programs, and that is what was done with the two subsidy programs now where funding currently isn't going out. And the reason it is not going out under the loan deficiency program and the counter cyclical program is because market prices are high.

''That's a good thing, because farm income is good, debt to asset ratio has never been better in farm country.

''But what this bill proposes to do, instead of holding those programs constant, they are actually increasing the loan rate under the loan deficiency program and the target price under the countercyclical program, which means that if things do turn south in farm country, if prices do drop—and we know how cyclical agriculture can be, and these are safety net programs—those programs will trigger much sooner and at a much greater expense than what I fear is being accounted for right now in this bill.

''That, I think, speaks to the unfunded mandate concern that the gentleman from Arizona and myself, and others included, have in regards to the so-called reforms that we are just not seeing under the commodity title, not when they go in the opposite direction with the LDP and the countercyclical programs by dialing up the loan rate and the target prices of those two programs and triggering them at a much earlier time and at a much greater expense for the taxpayers of this country. There is a whole lot of other reform that we felt were justifiable and reasonable under the commodity title.

''Quite frankly, we don't get there. In fact, if you look at the payment limitation caps that exist under the direct payments, it would only affect two-tenths of 1 percent of farmers in this country, hardly the type of reform we would like to see.''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, I would like to say that we will deal in the debate on the bill chiefly with regard to what the level of reforms is.

''I would just like to tell my colleagues and my friends from both Arizona and Wisconsin that there are, in fact, significant reforms. In fact, if you take the ratio when this bill was first brought up in 2002, you have a situation where the nutrition part of this bill, versus commodities, was by a ratio of 2–1, $2 for nutrition for every dollar of commodity payments.

''In this particular act that we are going to be bringing to the floor later today, it is my understanding, and my work with regard to the reforms, that there have been so many reforms put into this bill that the nutrition title versus the commodity payments is actually a 5–1 ratio at this point. I would say that indicates, as just one of many indicators, that you will see as we conduct this debate the significant reform that has happened in this bill.

''I believe this is good work. I am very proud to be a part of bringing this bill to the floor. I believe it complies with the House Rules, and, I, again, want to urge my colleagues to vote 'yes' on this motion to consider, so that we can pass this important piece of legislation today.

''Mr. Speaker, I ask for an 'aye' vote.''.

After debate,

The question being put, viva voce,

Will the House now consider said resolution?

The SPEAKER pro tempore, Mr. PASTOR, announced that the yeas had it.

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

POINT OF ORDER

(¶58.7)

A MEMBER WHO MAKES A POINT OF ORDER UNDER CLAUSE 9(B) OF RULE XXI THAT A RESOLUTION WAIVES CLAUSE 9(A) OF RULE XXI IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

AS DISPOSITION OF A POINT OF ORDER RAISED UNDER CLAUSE 9(B) OF RULE XXI, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE RULE OR ORDER THAT HAS WAIVED THE POINT OF ORDER.

On May 14, 2008, Mr. FLAKE made a point of order against consideration of the resolution and said:

''Mr. Speaker, I raise a point of order against House Resolution 1189 under clause 9 of rule XXI, because the resolution contains a waiver of all points of order against the conference report and its consideration.''.

The SPEAKER pro tempore, Mr. PASTOR, responded to the point of order, and said:

''Under clause 9(b) of rule XXI, the gentleman from Arizona [MR. FLAKE] makes a point of order that the resolution violates clause 9(b) of rule XXI.

''Such a point of order made under that resolution shall be disposed of by the question of consideration under the same terms as specified in clause 9(b) of rule XXI.

''After debate, the Chair will put the question of consideration, to wit: 'Will the House now consider the resolution?'.''.

Mr. FLAKE was further recognized and said:

''Mr. Speaker, this second point of order, and I will be calling for a vote on this one, is raised because of earmarks that have been airdropped into the legislation.

''As the gentleman mentioned, this is not a new bill. This is not something that just popped up last week and that there was a need to add $1 million for the National Sheep and Goat Industry Improvement Center, but that was something that had to come up at midnight and be dropped in when nobody had seen it in either the House or the Senate.

''This bill has been under consideration for a long, long time, and yet, still, we have earmarks that have been airdropped into the legislation, a number of them. Now, the gentleman may say in defense, we have listed the earmarks that have been airdropped in.

''It is true that some have been listed. If all of them were listed, why would we waive all points of order against the bill? If the majority was confident enough that all earmarks have been listed, then we wouldn't have waived the points of order against it. I will speak specifically about a few of these earmarks.

''But let me just mention some of them that are in the bill. There is authorization language for a National Products Research Laboratory. Again, this was airdropped in at the last minute when it hadn't been in the House version of the bill, hadn't been in the Senate, it was airdropped into the conference report. There is authorization language for a Policy Research Center, authorization language for Housing Assistance Council.

''Now, what that has to do with the farm bill, I am not sure, and the problem is, we will never know until the bill was passed because it was airdropped in at the last minute.

''That's the problem that the majority party correctly identified when they took control of this body, that we have a problem with earmarks, and they are being dropped in at the last minute without notice.

''That's why decent rules were actually put in place to try to curb this abuse. The problem is, in this rule, we are waiving those rules. We are waiving those rules so the old practice can continue on just like it always has.''.

Mr. CARDOZA was recognized to speak to the point of order and said:

''As my colleague knows, this point of order is about whether or not to consider this rule and the underlying conference report for the farm bill. This

point of order today is just another effort, in my opinion, by the other side of the aisle to block this critical legislation that we have worked on for nearly 2 years.

''They don't want to debate, and they don't want to vote on this conference report. They simply want to obstruct through a parliamentary tactic.

''I want to make it very clear that the farm bill fully complies with the earmark disclosure rules contained in clause 9 of rule XXI. I would suggest to those raising the point of order that they look in the statement of managers, and they will see a list of the earmarks. If they can't find that list, we will be happy to provide it for them.

''Mr. Speaker, I urge my colleagues to vote 'yes' and to consider this important rule.''.

Mr. FLAKE was further recognized and said:

''Mr. Speaker, I find it ironic that we are being accused on this side of trying to stifle debate on the bill, that we don't want debate on the bill when I am here to argue against a rule that waives these points of order and a rule that also does not allow opposition to claim time.

''Now, the majority will say, well, we will yield you time now. Now that we have been caught on this, we will yield you some time. That's not the same as controlling time.

''When I control time, I can yield time to my colleagues. If I am yielded time, I can't do that. I don't control time in opposition.

''Our House Rules say that if both the majority and the minority are in favor of the bill for the leadership, that somebody opposed to the bill has a right to claim time in opposition.

''That was not done here. With a bill this important, you wonder why that has happened.

''Back to the earmarks, the gentleman mentioned that there is a list of earmarks that was listed, it's right here, a number of them. Now why in the world we had to have more than a dozen earmarks airdropped into a bill that has been under consideration for the past 2 years, I simply don't know.

''But when you read some of them, you kind of wonder why, like I said, Housing Assistance Council, Sun Grant Insular Pacific Sub-Center, Desert Terminal Lakes, Nevada. This is all we know about them.

''If you dig into them, you might find something untoward, you might not, but the fact is we don't have time to do that. That's why we have earmark rules that give us time to actually vet them. Those rules are being waived here, and we should not be doing that.

''Let me mention also, the gentleman said they are all listed. They aren't. There is quite a controversial earmark in this legislation that does not show up on the list. It's a $250 million tax refund to the Plum Tree Timber Company. Now, this is an earmark that allows the Nature Conservancy to purchase that from the Plum Tree Timber Company.

''Now, the Plum Tree Timber Company, as I understand, is not mentioned in the legislation, it is simply described. It would be like saying I am going to give a subsidy to the gentleman who stands 6-feet tall, weighs 175 pounds, has blue eyes and his middle name is John, but we won't say the rest of it.

''That's exactly what we are doing here. In an effort to get around the scrutiny that might come if somebody actually said now why is a subsidy actually going to the Plum Tree Timber Company.

''It is no wonder that the rules have been waived here. If I had something like this in this bill, I would waive the rules too, because I wouldn't want anybody to talk about it. I would also not want anybody who is opposed to the bill to claim time in opposition to it.

''If I were sponsoring this legislation that I said reformed the farm subsidy program to make sure that multimillionaire farmers don't continue to get subsidies on behalf of the taxpayer, I would hide it as well. I would do exactly what the Rules Committee has done here and the supporters of the legislation have done.

''Because under this legislation, a farm couple earning as much as $2.5 million in adjusted gross income, that's your income after expenses are taken out, can still receive direct payments under this legislation.

''Also, the other subsidy programs, rather than reform or to get rid of the loopholes that were allowing people to get extra subsidies, we simply waive the limits there. This is called reform?

''I mean, is it any wonder that the rules have been waived and debate has been stifled here on this critical legislation?''.

Mr. PETERSON of Minnesota, was recognized to speak to the point of order and said:

''Mr. Speaker, I haven't seen the entire list that's being talked about here, but a couple of the things that have been mentioned are not earmarks, and I don't know why the gentleman continues to characterize them as such.

''First of all, this is not an earmark, it does not define Plum Creek. What it says is that these bonds can be used for any habitat conservation plans that protect native fish or any forest land covered by these habitat conservation plans.

''We know of at least seven habitat conservation plans that would qualify under this provision. So, therefore, it's not an earmark. The Cedar River Watershed Habitat Conservation Plan in King County, Washington, the Plum Creek Timber plan, which is also in Washington, the Washington Department of Natural Resources Forest Practices Habitat Conservation Plan in Washington, the West Fork Timber plan in Washington, the Plum Creek Native Fish Habitat Conservation Plan in Montana and Idaho, Green Diamond and Pacific Lumber, both in California.

''So this is not an earmark, because any of these would qualify. There are probably more that we don't know about. Now, this was in the Senate bill, so I don't know what you are talking about airdropped.

''A couple of the others that I heard you mention were also in the Senate bill, and there is another one that you characterize as an earmark, which is not an earmark, and that's the salmon recovery disaster plan which was a plan that was actually first passed in the 2006 Congress by the Republican majority, was implemented in 2006. Fifty million dollars at that time was put out to the people that were in the commercial fishing industry, primarily off the coast of California.

''At that time there was a partial shutdown of the salmon season. Now, this year, we have a complete shutdown of the salmon season all along the coast from California to Oregon to Washington State. So it's much broader, and it not only shut down the commercial fishing, it shut down the recreational fishing in those areas.

''What we are doing is replenishing this disaster fund with money that is exactly similar to what was done, what was in the statute and it was actually disbursed in 2006, because the disaster is much bigger this year than it was in 2006 because we had a partial shutdown. Now we have an entire shutdown of three States.

''So this is clearly not an earmark, this is in the disaster title of the farm bill that goes along with the other disaster provisions that are in the farm bill. You know, I don't know, I guess because apparently some people think that being against earmarks is popular and, whatever, they try to make this into an issue.

''But a number of the provisions that were raised by the gentleman are clearly not earmarks. The House bill that passed out of here had no earmarks.

''We had to deal with the other body, and we took some provisions from the other body, because that's how a conference works. You know, there is a lot worse stuff that was in that bill that we took out. I just want to clear the record that a number of things being talked about here are not earmarks, and I would encourage my colleagues not to support this point of order.''.

Mr. FLAKE was further recognized and said:

''The gentleman mentioned the National Marine Fishery Service earmark. It was added at the last minute. It may have been in a 2006 bill, but it wasn't in this bill until it was air dropped into the conference report. Now $170 million, that may well be a disaster there, but why in the world, if it is a disaster, why isn't it covered?''.

Mr. PETERSON of Minnesota, was further recognized and said:

''The House bill didn't have a paid-for disaster provision in it, the Senate bill did. And so when we molded these together, we put these disaster provisions in, and we paid for them, the first time that we actually paid for a disaster with pay-as-you-go money, and we in-

cluded the California disaster in the process and paid for it.

''This is not a new program. As I said, it is not an earmark, and it was brought in because we were dealing with a disaster. This is clearly a disaster. Any place that you have a complete shutdown of a commercial fishery, they are going to be in asking for help from the Federal Government. That is appropriate. This was brought in, the permanent disaster program from the Senate, and funded when we molded them together.''.

Mr. FLAKE was further recognized and said:

''I thank the gentleman for the clarification. I still would point out we have a $3.8 billion permanent disaster title added to the bill; and still, in addition to that, we are funding these kinds of programs directly and specifically.

''The gentleman can argue that it is not an earmark. I think that a casual or a tortured reading of this would both say this is an earmark when you are naming a specific entity to receive a specific amount of money and when it wasn't in the House bill, that is an earmark. So there is a good reason for this point of order.

''The gentleman said, and let me go back to the PAYGO issue. The gentleman mentioned that this rule he thinks is in compliance with PAYGO. Let me read what this conference report says and see if anybody can decipher this.''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, the gentleman raised a point of order with regard to earmarks, not with regard to the issue of PAYGO. That will be discussed in the rule itself. It will be germane to that later discussion.''.

The SPEAKER pro tempore, Mr. PASTOR, spoke and said:

''If the gentleman may confine his remarks to the question of order.''.

Mr. FLAKE was further recognized and said:

''If I might respond, the gentleman, after he raised his last point of order went on to talk about the reforms in the bill which clearly didn't have anything to do with the unfunded mandates language that I had raised or that I had talked about or that he had raised a point of order for. Clearly, I understand that they don't want to talk about this. I understand that. That's why the rules are waived. But to stand now and to raise a point of order against my point of order because I am not addressing specifically the question that they want to address or that they would rather dispose of is, I think, a little spurious.''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, when the gentleman says we talked about other issues in the last point of order, I was trying to be gracious with regard to the time and the discussion and allow the gentleman to speak. I raised an issue on the point of order on PAYGO because we are going to discuss that in the rules discussion, in the discussion of the rule.

''I would just remind the gentleman that in the time he has taken on these two points of order, he will probably have discussed this bill more than any other Member on the floor, even after we agreed to give him 20 minutes of debate on this topic. So I think that the gentleman thus protests too greatly, and I reserve the balance of my time.''.

Mr. FLAKE was further recognized and said:

''I thank the other side. You notice the words used, that we have graciously agreed to give them. Under the rules, the House rules, those who are opposed to the bill are required to be given the chance to claim time in opposition, not to be at the whims and graciousness of those who support the legislation. That's why we have rules, and that's why in this case the rules have been waived.

''I understand completely if I had waived the PAYGO rules, when so many on that side of the aisle, bless their hearts, have been diligent sometimes on raising the issue of PAYGO and saying we shouldn't violate it, if I had violated PAYGO and waived it like this, I would want to waive every rule as well and stifle all the debate I could because it is embarrassing, frankly.

''I would just say in my remaining 15 seconds, we have a bill that deserves a lot more debate than it is getting. This is important legislation. We are waiving PAYGO rules, and let me just say what this rule says: Therefore, while there is a technical violation of clause 10 of rule XXI, the conference report complies with the rule. It says there is a technical violation, but we have complied. It simply doesn't make sense.''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, I want to emphasize that this conference report fully complies with the earmark rule. In my opinion, it fully complies with the spirit of PAYGO.''.

Mr. PETERSON of Minnesota, was further recognized and said:

''I wasn't going to prolong this, but just like I had to take issue with saying earmarks were there that aren't there, I take very much issue with your saying we are waiving PAYGO. We are not waiving PAYGO. We are not waiving PAYGO in this bill. We are meeting PAYGO requirements based on the 2007 baseline which is what we started the bill under. This is what the rules are in the Senate.

''Let me explain my point first, and then I will be happy to yield.

''So the Senate has a rule that says under whatever baseline you start off with, that you continue under that baseline with the bill until a new budget resolution is passed by both the House and the Senate. For whatever reason, the House has a different rule when we adopted that, and it says once you file the Budget Committee report in the House, not when it is passed, if a new baseline comes along, you are supposed to use that. But clearly, we cannot write a bill of this magnitude and this scope having two different baselines. We can't have one baseline in the Senate and another baseline in the House. That is number one.

''Number two, the common practice around this place has always been to follow this rule, that we always use the baseline that we started off with. That is what we have done for years. So all we are doing is complying with what the Senate rule is because we have to do that and it makes sense. We are not trying to waive anything. We are not trying to get around anything. This bill, it meets PAYGO requirements and it meets it under the 2007 baseline which is what we started the bill under. And we are not waiving PAYGO.''.

Mr. HASTINGS of Washington, was recognized to speak to the point of order and said:

''I would just like to make this point. This rule provides for waivers of other rules. Last night when we were up in the Rules Committee——''.

Mr. CARDOZA was further recognized and said:

''Mr. Speaker, I control the time under the remainder of my motion, and I believe the gentleman is discussing the rule.

''I don't yield, and if the gentleman from Washington would just suspend for a moment, I just would like to say that I do not yield because we are talking about a whole different topic here. I would like to make sure that we consider the point of order that has been raised directly by the gentleman from Arizona and not make this a wide-ranging debate with regard to the rule.''.

After debate,

The question being put, viva voce,

Will the House now consider said resolution?

The SPEAKER pro tempore, Mr. PASTOR, announced that the yeas had it.

Mr. FLAKE demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 228 Nays 189

¶58.8 [Roll No. 309]

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

POINT OF ORDER

(¶59.15)

CLAUSE 10 OF RULE XXI, WHICH PROHIBITS CONSIDERATION OF MEASURES IF THE NET EFFECT OF ITS PROVISIONS AFFECTING DIRECT SPENDING AND REVENUES INCREASES THE DEFICIT OR REDUCES THE SURPLUS OVER CERTAIN TIME PERIODS, DOES NOT APPLY TO SPENDING PROVIDED BY APPROPRIATION ACTS,

WHICH IS EXCLUDED FROM THE MOST PERTINENT DEFINITION OF ''DIRECT SPENDING'' (IN SECTION 250 OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985).

On May 15, 2008, Mr. RYAN of Wisconsin, made a point of order against said motion to agree to the amendment of the Senate with amendments, and said:

''Mr. Speaker, I make a point of order against consideration of the measure.

''Mr. Speaker, I make a point of order that the measure causes an increase in the deficit over a 6- and 11-year period and therefore violates clause 10 of House rule XXI, the PAYGO point of order.

''Mr. Speaker, there is undeniably net direct spending included in this bill. Hence it increases the deficit. Simply by putting new entitlement spending on an appropriation bill in order to evade PAYGO would constitute a blatant loophole in the PAYGO point of order. If PAYGO is designed to prevent increases in the deficit, this measure should not be considered here today.

''I therefore urge that my point of order be sustained.''.

Mr. OBEY was recognized to speak to the point of order and said:

''Mr. Speaker, the gentleman may be reciting the PAYGO rule as he wishes it were, but that's not the way it is.

''The legislation before the House fully complies with the PAYGO rule. That rule deals with direct spending and revenues.

''As to revenues, the revenue effects of this package reduce the deficit, rather than increasing it. As to spending, none of the spending in this package falls into the direct spending category, which is basically defined as spending outside the appropriations process.

''Even though not technically required to do so, the Medicaid provisions and the expansion of veterans' education benefits fully meet the PAYGO standard. Both sets of provisions contain offsets to ensure that they do not increase the deficit over the 5- and 10-year periods used by the PAYGO rule.

''The rest of the bill consists mostly of emergency appropriations for defense and other security-related needs, largely for things requested by the President. And the other major spending item, relating to extended unemployment compensation benefits, is temporary in nature and responds to current hardships created by the economic downturn.

''So I believe that we ought to abide by the House rules as they are, not as some Members wish they were.''.

The SPEAKER pro tempore, Mr. TIERNEY, overruled the point of order, and said:

''The gentleman from Wisconsin makes a point of order that the motion violates clause 10 of rule XXI by increasing a deficit.

''Clause 10 of rule XXI provides a point of order against a measure if the provisions of such measure affecting direct spending or revenues have the net effect of increasing a deficit or reducing a surplus. Clause 10 of rule XXI further provides that the effect of the measure on the deficit or surplus is determined by the Committee on the Budget relative to certain estimates supplied by the Congressional Budget Office.

''The gentleman from Wisconsin has asserted that the motion contains direct spending that causes an increase in a deficit. As a threshold matter, the Chair must determine if provisions in the measure affect 'direct spending.'.

''In reviewing the text of clause 10 of rule XXI, the Chair finds no definition of the term 'direct spending.'. Because clause 10 of rule XXI is a budget enforcement mechanism, the Chair finds it prudent to look to other budget enforcement schemes for guidance in defining this term. In a review of relevant budget enforcement statutes, the Chair finds a definition of the term 'direct spending' in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, hereafter section 250. The definition in section 250 provides, in pertinent part, that ''direct spending'' means budget authority provided by law other than appropriation Acts.

''The underlying bill, H.R. 2642, is a general appropriation bill. This measure constitutes an 'appropriation Act' within the meaning of section 250. The motion proposes amendments that would make emergency supplemental appropriations for the fiscal year 2008. Accordingly, the budget authority portended by the motion does not constitute 'direct spending' for purposes of section 250, and by extension, the Chair finds that the motion does not affect direct spending for purposes of clause 10 of rule XXI.

''Pursuant to clause 10 of rule XXI, the Committee on the Budget is required to provide estimates to the Chair on the effect of the measure on the deficit. In consonance with the Chair's findings, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions of the pending motion affecting revenues and direct spending would not increase a deficit.

''Accordingly, the point of order is overruled.''.

When said motion was considered.

PRIVILEGES OF THE HOUSE

(¶64.7)

A RESOLUTION ALLEGING THAT KNOWN ERRORS IN THE ENROLLMENT OF A BILL WERE IGNORED AFTER THE PRESIDENT HAD TRANSMITTED TO THE HOUSE A RETURN VETO OF THE MEASURE; AND RESOLVING THAT THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT BE DIRECTED TO INVESTIGATE THE ABUSE OF POWER SURROUNDING INACCURACIES IN THE ENROLLMENT OF A BILL, AND ADMONISHING THE MAJORITY LEADERSHIP FOR THEIR ROLES IN THE INACCURACIES, PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE.

On May 22, 2008, Mr. BOEHNER, rose to a question of the privileges of the House and submitted the following resolution:

Whereas the Democratic Leadership has engaged in a continuing pattern of withholding accurate information vital for Members of the House of Representatives to have before voting on legislation;

Whereas the conference report on H.R. 2419, which was adopted by the House on May 14, 2008, and the Senate on May 15, 2008, contained title III, relating to trade, which contained sections 3001 through 3301;

Whereas the Speaker and the Clerk certified that the enrolled copy of H.R. 2419 transmitted to the President was a true and accurate reflection of the actions taken by the House and Senate;

Whereas the enrolled copy certified by the Speaker and the Clerk and presented to the President failed to include title III and sections 3001 through 3301 and was not an accurate or complete document;

Whereas the President vetoed and returned to the House said certified copy;

Whereas before laying the President's message before the House, the Speaker and the Democratic Leadership were informed by the Office of the Law Revision Counsel and the Committee on Agriculture that said certified copy was erroneous and not an accurate or complete document;

Whereas on May 21, 2008, the Democratic Leadership deliberately chose to ignore that notification and instead allowed the House to vote on an incorrect version of this legislation;

Whereas a veto override requires ⅔ of the House to vote in the affirmative, and knowledge of this mistake may have influenced each Member's decision and therefore changed the outcome of this vote, which is why the Democratic Leadership chose not to pursue a correction of this legislation;

Whereas the effect of these actions raises serious constitutional questions and jeopardizes the legal status of this legislation;

Whereas Speaker Pelosi and Majority Leader Hoyer knowingly scheduled and began consideration of the President's veto of H.R. 2419, without regard to the serious and obvious constitutional questions and detrimental implications to the sanctity of the House and its process;

Whereas at the direction of the Republican Leader, senior staff contacted the Chief-of-Staff to the Speaker and the Floor Director for the Majority Leader, requesting that they immediately halt consideration of the veto message until the facts surrounding the errors could be sorted out and all Members could be notified;

Whereas the Democratic Leadership refused that request;

Whereas in the 109th Congress, the current Speaker, Nancy Pelosi, offered a privileged resolution, H. Res. 683, accusing the Republicans of concealment, incompetence, and corruption with respect to the enrollment error of the Deficit Reduction Act;

Whereas the Deficit Reduction Act was the subject of numerous lawsuits questioning its validity due to the enrollment error, including a lawsuit filed by several Democratic Members;

Whereas in a memorandum from the Clerk of the House to Speaker Nancy Pelosi enti-

tled ''Farm Bill Omission'' and dated May 21, 2008, the Clerk stated ''Enrolling Division staff expressed concern in receiving direct calls from Leadership and the Committee to accelerate the enrolling process.''; and

Whereas the Democratic Leadership's repeated efforts to thwart the normal legislative process by cutting corners, ignoring requirements of the Constitution and House rules, and rushing through legislation with major errors, forces Members to vote on controversial legislation without thorough time for review and must be denounced:

Now, therefore, be it

Resolved, That——

(1) the Committee on Standards of Official Conduct shall begin an immediate investigation into the abuse of power surrounding the inaccuracies in the process and enrollment of H.R. 2419, Food and Energy Security Act of 2007, vetoed by the President on May 21, 2008; and,

(2) the Speaker, Majority Leader and other Members of the Democratic Leadership are hereby admonished for their roles in the events surrounding this enrollment error.

Pending consideration of said resolution.

Mr. CARDOZA moved to lay the resolution on the table.

The question being put, viva voce,

Will the House lay the resolution on the table?

The SPEAKER pro tempore, Mr. SERRANO, announced that the yeas had it.

Mr. BOEHNER demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative .....

Yeas	220
Nays	188
Answered present	10

¶64.8 [Roll No. 352]

So, the motion to lay the resolution on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PRIVILEGES OF THE HOUSE

(¶69.39)

A RESOLUTION PRESENTING ARTICLES OF IMPEACHMENT AGAINST THE PRESIDENT OF THE UNITED STATES PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE REFERRED A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE TO THE COMMITTEE ON THE JUDICIARY.

On June 10, 2008, Mr. KUCINICH rose to a question of the privileges of the House and submitted the following resolution:

Resolved, That President George W. Bush be impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, in maintenance and support of its impeachment against President George W. Bush for high crimes and misdemeanors.

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has committed the following abuses of power.

ARTICLE I.—CREATING A SECRET PROPAGANDA CAMPAIGN TO MANUFACTURE A FALSE CASE FOR WAR AGAINST IRAQ

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, illegally spent public dollars on a secret propaganda program to manufacture a false cause for war against Iraq.

The Department of Defense (DOD) has engaged in a years-long secret domestic propaganda campaign to promote the invasion and occupation of Iraq. This secret program was defended by the White House Press Secretary following its exposure. This program follows the pattern of crimes detailed in Article I, II, IV and VIII.. The mission of this program placed it within the field controlled by the White House Iraq Group (WHIG), a White House task-force formed in August 2002 to market an invasion of Iraq to the American people. The group included Karl Rove, I. Lewis Libby, Condoleezza Rice, Karen Hughes, Mary Matalin, Stephen Hadley, Nicholas E. Calio, and James R. Wilkinson.

The WHIG produced white papers detailing so-called intelligence of Iraq's nuclear threat that later proved to be false. This supposed intelligence included the claim that Iraq had sought uranium from Niger as well as the claim that the high strength aluminum tubes Iraq purchased from China were to be used for the sole purpose of building centrifuges to enrich uranium. Unlike the National Intelligence Estimate of 2002, the WHIG's white papers provided ''gripping images and stories'' and used ''literary license'' with intelligence. The WHIG's white papers were written at the same time and by the same people as speeches and talking points prepared for President Bush and some of his top officials.

The WHIG also organized a media blitz in which, between September 7–8, 2002, President Bush and his top advisers appeared on numerous interviews and all provided similarly gripping images about the possibility of nuclear attack by Iraq. The timing was no coincidence, as Andrew Card explained in an interview regarding waiting until after Labor Day to try to sell the American people on military action against Iraq, ''From a marketing point of view, you don't introduce new products in August.''

September 7–8, 2002:

NBC's ''Meet the Press: Vice President Cheney accused Saddam of moving aggressively to develop nuclear weapons over the past 14 months to add to his stockpile of chemical and biological arms.

CNN: Then-National Security Adviser Rice said, regarding the likelihood of Iraq obtaining a nuclear weapon, ''We don't want the smoking gun to be a mushroom cloud.''

CBS: President Bush declared that Saddam was ''six months away from developing a weapon,'' and cited satellite photos of construction in Iraq where weapons inspectors once visited as evidence that Saddam was trying to develop nuclear arms.

The Pentagon military analyst propaganda program was revealed in an April 20, 2002, New York Times article. The program illegally involved ''covert attempts to mold opinion through the undisclosed use of third parties.'' Secretary of Defense Donald Rumsfeld recruited 75 retired military officers and gave them talking points to deliver on Fox, CNN, ABC, NBC, CBS, and MSNBC, and according to the New York Times report, which has not been disputed by the Pentagon or the White House, ''Participants were instructed not to quote their briefers directly or otherwise describe their contacts with the Pentagon.''

According to the Pentagon's own internal documents, the military analysts were considered ''message force multipliers'' or ''surrogates'' who would deliver administration ''themes and messages'' to millions of Americans ''in the form of their own opinions.'' In fact, they did deliver the themes and the messages but did not reveal that the Pentagon had provided them with their talking points. Robert S. Bevelacqua, a retired Green Beret and Fox News military analyst described this as follows: ''It was them saying, 'We need to stick our hands up your back and move your mouth for you.'''

Congress has restricted annual appropriations bills since 1951 with this language: ''No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.''

A March 21, 2005, report by the Congressional Research Service states that ''publicity or propaganda'' is defined by the U.S. Government Accountability Office (GAO) to mean either (1) self-aggrandizement by public officials, (2) purely partisan activity, or (3) ''covert propaganda.''

These concerns about ''covert propaganda'' were also the basis for the GAO's standard for determining when government-funded video news releases are illegal:

''The failure of an agency to identify itself as the source of a prepackaged news story misleads the viewing public by encouraging the viewing audience to believe that the broadcasting news organization developed the information. The prepackaged news stories are purposefully designed to be indistinguishable from news segments broadcast to the public. When the television viewing public does not know that the stories they watched on television news programs about the government were in fact prepared by the government, the stories are, in this sense, no longer purely factual—the essential fact of attribution is missing.''

The White House's own Office of Legal Council stated in a memorandum written in 2005 following the controversy over the Armstrong Williams scandal:

''Over the years, GAO has interpreted 'publicity or propaganda' restrictions to preclude use of appropriated funds for, among other things, so-called 'covert propaganda.' . . . Consistent with that view, the OLC determined in 1988 that a statutory prohibition on using appropriated funds for 'publicity or propaganda' precluded undisclosed agency funding of advocacy by third-party groups. We stated that 'covert attempts to mold opinion through the undisclosed use of third parties' would run afoul of restrictions on using appropriated funds for 'propaganda.'''

Asked about the Pentagon's propaganda program at White House press briefing in April 2008, White House Press Secretary Dana Perino defended it, not by arguing that

it was legal but by suggesting that it ''should'' be: ''Look, I didn't know look, I think that you guys should take a step back and look at this look, DOD has made a decision, they've decided to stop this program. But I would say that one of the things that we try to do in the administration is get information out to a variety of people so that everybody else can call them and ask their opinion about something. And I don't think that that should be against the law. And I think that it's absolutely appropriate to provide information to people who are seeking it and are going to be providing their opinions on it. It doesn't necessarily mean that all of those military analysts ever agreed with the administration. I think you can go back and look and think that a lot of their analysis was pretty tough on the administration. That doesn't mean that we shouldn't talk to people.''

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE II.—FALSELY, SYSTEMATICALLY, AND WITH CRIMINAL INTENT CONFLATING THE ATTACKS OF SEPTEMBER 11, 2001 WITH MISREPRESENTATION OF IRAQ AS AN IMMINENT SECURITY THREAT AS PART OF A FRAUDULENT JUSTIFICATION FOR A WAR OF AGGRESSION.

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, executed a calculated and wide-ranging strategy to deceive the citizens and Congress of the United States into believing that there was and is a connection between Iraq and Saddam Hussein on the one hand, and the attacks of September 11, 2001 and al Qaeda, on the other hand, so as to falsely justify the use of the United States Armed Forces against the nation of Iraq in a manner that is damaging to the national security interests of the United States, as well as to fraudulently obtain and maintain congressional authorization and funding for the use of such military force against Iraq, thereby interfering with and obstructing Congress's lawful functions of overseeing foreign affairs and declaring war.

The means used to implement this deception were and continue to be, first, allowing, authorizing and sanctioning the manipulation of intelligence analysis by those under his direction and control, including the Vice President and the Vice President's agents, and second, personally making, or causing, authorizing and allowing to be made through highly- placed subordinates, including the President's Chief of Staff, the White House Press Secretary and other White House spokespersons, the Secretaries of State and Defense, the National Security Advisor, and their deputies and spokespersons, false and fraudulent representations to the citizens of the United States and Congress regarding an alleged connection between Saddam Hussein and Iraq, on the one hand, and the September 11th attacks and al Qaeda, on the other hand, that were half-true, literally true but misleading, and/or made without a reasonable basis and with reckless indifference to their truth, as well as omitting to state facts necessary to present an accurate picture of the truth as follows:

(A) On or about September 12, 2001, former terrorism advisor Richard Clarke personally informed the President that neither Saddam Hussein nor Iraq was responsible for the September 11th attacks. On September 18, Clarke submitted to the President's National Security Adviser Condoleezza Rice a memo he had written in response to George W. Bush's specific request that stated: (1) the case for linking Hussein to the September 11th attacks was weak; (2) only anecdotal evidence linked Hussein to al Qaeda; (3) Osama Bin Laden resented the secularism of Saddam Hussein; and (4) there was no confirmed reporting of Saddam Hussein cooperating with Bin Laden on unconventional weapons.

(B) Ten days after the September 11th attacks the President received a President's Daily Briefing which indicated that the U.S. intelligence community had no evidence linking Saddam Hussein to the September 11th attacks and that there was ''scant credible evidence that Iraq had any significant collaborative ties with Al Qaeda.''

(C) In Defense Intelligence Terrorism Summary No. 044–02, issued in February 2002, the United States Defense Intelligence Agency cast significant doubt on the possibility of a Saddam Hussein-Al Qaeda conspiracy: ''Saddam's regime is intensely secular and is wary of Islamic revolutionary movements. Moreover, Baghdad is unlikely to provide assistance to a group it cannot control.''

(D) The October 2002 National Intelligence Estimate gave a ''Low Confidence'' rating to the notion of whether ''in desperation Saddam would share chemical or biological weapons with Al Qaeda.'' The CIA never informed the President that there was an operational relationship between Al Qaeda and Saddam Hussein; on the contrary, its most ''aggressive'' analysis contained in Iraq and al-Qaeda-Interpreting a ''Murky Relationship'' dated June 21, 2002 was that Iraq had had ''sporadic, wary contacts with al Qaeda since the mid-1990s rather than a relationship with al Qaeda that has developed over time.''

(E) Notwithstanding his knowledge that neither Saddam Hussein nor Iraq was in any way connected to the September 11th attacks, the President allowed and authorized those acting under his direction and control, including Vice President Richard B. Cheney and Lewis Libby, who reported directly to both the President and the Vice President, and Secretary of Defense Donald Rumsfeld, among others, to pressure intelligence analysts to alter their assessments and to create special units outside of, and unknown to, the intelligence community in order to secretly obtain unreliable information, to manufacture intelligence or reinterpret raw data in ways that would further the Bush administration's goal of fraudulently establishing a relationship not only between Iraq and al Qaeda, but between Iraq and the attacks of September 11th.

(F) Further, despite his full awareness that Iraq and Saddam Hussein had no relationship to the September 11th attacks, the President, and those acting under his direction and control have, since at least 2002 and continuing to the present, repeatedly issued public statements deliberately worded to mislead, words calculated in their implication to bring unrelated actors and circumstances into an artificially contrived reality thereby facilitating the systematic deception of Congress and the American people. Thus the public and some members of Congress, came to believe, falsely, that there was a connection between Iraq and the attacks of 9/11. This was accomplished through well-publicized statements by the Bush Administration which contrived to continually tie Iraq and 9/11 in the same statements of grave concern without making an explicit charge:

(1) ''[If] Iraq regimes [sic] continues to defy us, and the world, we will move deliberately, yet decisively, to hold Iraq to account . . . It's a new world we're in. We used to think two oceans could separate us from an enemy. On that tragic day, September the 11th, 2001, we found out that's not the case. We found out this great land of liberty and of freedom and of justice is vulnerable. And therefore we must do everything we can—everything we can—to secure the homeland, to make us safe.'' Speech of President Bush in Iowa on September 16, 2002.

(2) ''With every step the Iraqi regime takes toward gaining and deploying the most terrible weapons, our own options to confront that regime will narrow. And if an emboldened regime were to supply these weapons to terrorist allies, then the attacks of September 11th would be a prelude to far greater horrors.'' March 6, 2003, Statement of President Bush in National Press Conference.

(3) ''The battle of Iraq is one victory in a war on terror that began on September the 11, 2001—and still goes on. That terrible morning, 19 evil men—the shock troops of a hateful ideology—gave America and the civilized world a glimpse of their ambitions. They imagined, in the words of one terrorist, that September the 11th would be the 'beginning of the end of America.' By seeking to turn our cities into killing fields, terrorists and their allies believed that they could destroy this nation's resolve, and force our retreat from the world. They have failed.'' May 1, 2003, Speech of President Bush on U.S.S. *Abraham Lincoln*.

(4) ''Now we're in a new and unprecedented war against violent Islamic extremists. This is an ideological conflict we face against murderers and killers who try to impose their will. These are the people that attacked us on September the 11th and killed nearly 3,000 people. The stakes are high, and once again, we have had to change our strategic thinking. The major battleground in this war is Iraq.'' June 28, 2007, Speech of President Bush at the Naval War College in Newport, Rhode Island.

(G) Notwithstanding his knowledge that there was no credible evidence of a working relationship between Saddam Hussein and Al Qaeda and that the intelligence community had specifically assessed that there was no such operational relationship, the President, both personally and through his subordinates and agents, has repeatedly falsely represented, both explicitly and implicitly, and through the misleading use of selectively-chosen facts, to the citizens of the United States and to the Congress that there was and is such an ongoing operational relationship, to wit:

(1) ''We know that Iraq and al Qaeda have had high-level contacts that go back a decade. Some al Qaeda leaders who fled Afghanistan went to Iraq. These include one very senior al Qaeda leader who received medical treatment in Baghdad this year, and who has been associated with planning for chemical and biological attacks. We've learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases.'' September 28, 2002, Weekly Radio Address of President Bush to the Nation.

(2) ''[W]e we need to think about Saddam Hussein using al Qaeda to do his dirty work, to not leave fingerprints behind.'' October 14, 2002, Remarks by President Bush in Michigan.

(3) ''We know he's got ties with al Qaeda.'' November 1, 2002, Speech of President Bush in New Hampshire.

(4) ''Evidence from intelligence sources, secret communications, and statements by

people now in custody reveal that Saddam Hussein aids and protects terrorists, including members of al Qaeda. Secretly, and without fingerprints, he could provide one of his hidden weapons to terrorists, or help them develop their own.'' January 28, 2003, President Bush's State of the Union Address.

(5) ''[W]hat I want to bring to your attention today is the potentially much more sinister nexus between Iraq and the al Qaeda terrorist network, a nexus that combines classic terrorist organizations and modern methods of murder. Iraq today harbors a deadly terrorist network . . .'' February 5, 2003, Speech of Former Secretary of State Colin Powell to the United Nations.

(6) ''The battle of Iraq is one victory in a war on terror that began on September the 11, 2001—and still goes on. . . . [T]he liberation of Iraq . . . removed an ally of al Qaeda.'' May 1, 2003, Speech of President Bush on U.S.S. *Abraham Lincoln*.

(H) The Senate Select Committee on Intelligence Report on Whether Public Statements Regarding Iraq By U.S. Government Officials Were Substantiated By Intelligence Information, which was released on June 5, 2008, concluded that:

(1) ''Statements and implications by the President and Secretary of State suggesting that Iraq and al-Qaeda had a partnership, or that Iraq had provided al-Qaeda with weapons training, were not substantiated by the intelligence.''

(2) ''The Intelligence Community did not confirm that Muhammad Atta met an Iraqi intelligence officer in Prague in 2001 as the Vice President repeatedly claimed.''

Through his participation and instance in the breathtaking scope of this deception, the President has used the highest office of trust to wage of campaign of deception of such sophistication as to deliberately subvert the national security interests of the United States. His dishonesty set the stage for the loss of more than 4000 United States service members; injuries to tens of thousands of soldiers, the loss of more than 1,000,000 innocent Iraqi citizens since the United States invasion; the loss of approximately $527 billion in war costs which has increased our Federal debt and the ultimate expenditure of three to five trillion dollars for all costs covering the war; the loss of military readiness within the United States Armed Services due to overextension, the lack of training and lack of equipment; the loss of United States credibility in world affairs; and the decades of likely blowback created by the invasion of Iraq.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE III.—MISLEADING THE AMERICAN PEOPLE AND MEMBERS OF CONGRESS TO BELIEVE IRAQ POSSESSED WEAPONS OF MASS DESTRUCTION, SO AS TO MANUFACTURE A FALSE CASE FOR WAR

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, executed instead a calculated and wide-ranging strategy to deceive the citizens and Congress of the United States into believing that the nation of Iraq possessed weapons of mass destruction in order to justify the use of the United States Armed Forces against the nation of Iraq in a manner damaging to our national security interests, thereby interfering with and obstructing Congress's lawful functions of overseeing foreign affairs and declaring war.

The means used to implement this deception were and continue to be personally making, or causing, authorizing and allowing to be made through highly-placed subordinates, including the President's Chief of Staff, the White House Press Secretary and other White House spokespersons, the Secretaries of State and Defense, the National Security Advisor, and their deputies and spokespersons, false and fraudulent representations to the citizens of the United States and Congress regarding Iraq's alleged possession of biological, chemical and nuclear weapons that were half-true, literally true but misleading, and/or made without a reasonable basis and with reckless indifference to their truth, as well as omitting to state facts necessary to present an accurate picture of the truth as follows:

(A) Long before the March 19, 2003 invasion of Iraq, a wealth of intelligence informed the President and those under his direction and control that Iraq's stockpiles of chemical and biological weapons had been destroyed well before 1998 and that there was little, if any, credible intelligence that showed otherwise. As reported in the Washington Post in March of 2003, in 1995, Saddam Hussein's son-in-law Hussein Kamel had informed U.S. and British intelligence officers that ''all weapons—biological, chemical, missile, nuclear were destroyed.'' In September 2002, the Defense Intelligence Agency issued a report that concluded: ''A substantial amount of Iraq's chemical warfare agents, precursors, munitions and production equipment were destroyed between 1991 and 1998 as a result of Operation Desert Storm and UNSCOM actions . . . [T]here is no reliable information on whether Iraq is producing and stockpiling chemical weapons or whether Iraq has—or will—establish its chemical warfare agent production facilities.'' Notwithstanding the absence of evidence proving that such stockpiles existed and in direct contradiction to substantial evidence that showed they did not exist, the President and his subordinates and agents made numerous false representations claiming with certainty that Iraq possessed chemical and biological weapons that it was developing to use to attack the United States, to wit:

(1) ''[T]he notion of a Saddam Hussein with his great oil wealth, with his inventory that he already has of biological and chemical weapons . . . is, I think, a frightening proposition for anybody who thinks about it.'' Statement of Vice President Cheney on CBS's Face the Nation, March 24, 2002.

(2) ''In defiance of the United Nations, Iraq has stockpiled biological and chemical weapons, and is rebuilding the facilities used to make more of those weapons.'' Speech of President Bush, October 5, 2002.

(3) ''All the world has now seen the footage of an Iraqi Mirage aircraft with a fuel tank modified to spray biological agents over wide areas. Iraq has developed spray devices that could be used on unmanned aerial vehicles with ranges far beyond what is permitted by the Security Council. A UAV launched from a vessel off the American coast could reach hundreds of miles inland.'' Statement by President Bush from the White House, February 6, 2003.

(B) Despite overwhelming intelligence in the form of statements and reports filed by and on behalf of the CIA, the State Department and the IAEA, among others, which indicated that the claim was untrue, the President, and those under his direction and control, made numerous representations claiming and implying through misleading language that Iraq was attempting to purchase uranium from Niger in order to falsely buttress its argument that Iraq was reconstituting its nuclear weapons program, including:

(1) ''The regime has the scientists and facilities to build nuclear weapons, and is seeking the materials needed to do so.'' Statement of President Bush from White House, October 2, 2002.

(2) ''The [Iraqi] report also failed to deal with issues which have arisen since 1998, including: . . . attempts to acquire uranium and the means to enrich it.'' Letter from President Bush to Vice President Cheney and the Senate, January 20, 2003.

(3) ''The British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.'' President Bush Delivers State of the Union Address, January 28, 2003.

(C) Despite overwhelming evidence in the form of reports by nuclear weapons experts from the Energy, the Defense and State Departments, as well from outside and international agencies which assessed that aluminum tubes the Iraqis were purchasing were not suitable for nuclear centrifuge use and were, on the contrary, identical to ones used in rockets already being manufactured by the Iraqis, the President, and those under his direction and control, persisted in making numerous false and fraudulent representations implying and stating explicitly that the Iraqis were purchasing the tubes for use in a nuclear weapons program, to wit:

(1) ''We do know that there have been shipments going . . . into Iraq . . . of aluminum tubes that really are only suited to—high-quality aluminum tools [sic] that are only really suited for nuclear weapons programs, centrifuge programs.'' Statement of then National Security Advisor Condoleezza Rice on CNN's Late Edition with Wolf Blitzer, September 8, 2002.

(2) ''Our intelligence sources tell us that he has attempted to purchase high-strength aluminum tubes suitable for nuclear weapons production.'' President Bush's State of the Union Address, January 28, 2003.

(3) ''[H]e has made repeated covert attempts to acquire high-specification aluminum tubes from 11 different countries, even after inspections resumed. . . . By now, just about everyone has heard of these tubes and we all know that there are differences of opinion. There is controversy about what these tubes are for. Most U.S. experts think they are intended to serve as rotors in centrifuges used to enrich uranium.'' Speech of Former Secretary of State Colin Powell to the United Nations, February 5, 2003.

(D) The President, both personally and acting through those under his direction and control, suppressed material information, selectively declassified information for the improper purposes of retaliating against a whistleblower and presenting a misleading picture of the alleged threat from Iraq, facilitated the exposure of the identity of a covert CIA operative and thereafter not only failed to investigate the improper leaks of classified information from within his administration, but also failed to cooperate with an investigation into possible federal violations resulting from this activity and, finally, entirely undermined the prosecution by commuting the sentence of Lewis Libby citing false and insubstantial grounds, all in an effort to prevent Congress and the citizens of the United States from discovering the fraudulent nature of the President's claimed justifications for the invasion of Iraq.

(E) The Senate Select Committee on Intelligence Report on Whether Public State-

ments Regarding Iraq By U.S. Government Officials Were Substantiated By Intelligence Information, which was released on June 5, 2008, concluded that:

(1) ''Statements by the President and Vice President prior to the October 2002 National Intelligence Estimate regarding Iraq's chemical weapons production capability and activities did not reflect the intelligence community's uncertainties as to whether such production was ongoing.''

(2) ''The Secretary of Defense's statement that the Iraqi government operated underground WMD facilities that were not vulnerable to conventional airstrikes because they were underground and deeply buried was not substantiated by available intelligence information.''

(3) Chairman of the Senate Intelligence Committee Jay Rockefeller concluded: ''In making the case for war, the Administration repeatedly presented intelligence as fact when in reality it was unsubstantiated, contradicted, or even non-existent. As a result, the American people were led to believe that the threat from Iraq was much greater than actually existed.''

The President has subverted the national security interests of the United States by setting the stage for the loss of more than 4000 United States service members and the injury to tens of thousands of U.S. soldiers; the loss of more than 1,000,000 innocent Iraqi citizens since the United States invasion; the loss of approximately $500 billion in war costs which has increased our Federal debt with a long term financial cost of between three and five trillion dollars; the loss of military readiness within the United States Armed Services due to overextension, the lack of training and lack of equipment; the loss of United States credibility in world affairs; and the decades of likely blowback created by the invasion of Iraq.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE IV.—MISLEADING THE AMERICAN PEOPLE AND MEMBERS OF CONGRESS TO BELIEVE IRAQ POSED AN IMMINENT THREAT TO THE UNITED STATES

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, executed a calculated and wide-ranging strategy to deceive the citizens and Congress of the United States into believing that the nation of Iraq posed an imminent threat to the United States in order to justify the use of the United States Armed Forces against the nation of Iraq in a manner damaging to our national security interests, thereby interfering with and obstructing Congress's lawful functions of overseeing foreign affairs and declaring war.

The means used to implement this deception were and continue to be, first, allowing, authorizing and sanctioning the manipulation of intelligence analysis by those under his direction and control, including the Vice President and the Vice President's agents, and second, personally making, or causing, authorizing and allowing to be made through highly-placed subordinates, including the President's Chief of Staff, the White House Press Secretary and other White House spokespersons, the Secretaries of State and Defense, the National Security Advisor, and their deputies and spokespersons, false and fraudulent representations to the citizens of the United States and Congress regarding an alleged urgent threat posed by Iraq, statements that were half-true, literally true but misleading, and/or made without a reasonable basis and with reckless indifference to their truth, as well as omitting to state facts necessary to present an accurate picture of the truth as follows:

(A) Notwithstanding the complete absence of intelligence analysis to support a claim that Iraq posed an imminent or urgent threat to the United States and the intelligence community's assessment that Iraq was in fact not likely to attack the United States unless it was itself attacked, President Bush, both personally and through his agents and subordinates, made, allowed and caused to be made repeated false representations to the citizens and Congress of the United States implying and explicitly stating that such a dire threat existed, including the following:

(1) ''States such as these [Iraq, Iran and North Korea] and their terrorist allies constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic.'' President Bush's State of the Union Address, January 29, 2002.

(2) ''Simply stated, there is no doubt that Saddam Hussein has weapons of mass destruction. He is amassing them to use against our friends, our enemies and against us.'' Speech of Vice President Cheney at VFW 103rd National Convention, August 26, 2002.

(3) ''The history, the logic, and the facts lead to one conclusion: Saddam Hussein's regime is a grave and gathering danger. To suggest otherwise is to hope against the evidence. To assume this regime's good faith is to bet the lives of millions and the peace of the world in a reckless gamble. And this is a risk we must not take.'' Address of President Bush to the United Nations General Assembly, September 12, 2002.

(4) ''[N]o terrorist state poses a greater or more immediate threat to the security of our people than the regime of Saddam Hussein and Iraq.'' Statement of Former Defense Secretary Donald Rumsfeld to Congress, September 19, 2002.

(5) ''On its present course, the Iraqi regime is a threat of unique urgency . . . it has developed weapons of mass death.'' Statement of President Bush at White House, October 2, 2002.

(6) ''But the President also believes that this problem has to be dealt with, and if the United Nations won't deal with it, then the United States, with other likeminded nations, may have to deal with it. We would prefer not to go that route, but the danger is so great, with respect to Saddam Hussein having weapons of mass destruction, and perhaps even terrorists getting hold of such weapons, that it is time for the international community to act, and if it doesn't act, the President is prepared to act with likeminded nations.'' Statement of Former Secretary of State Colin Powell in interview with Ellen Ratner of Talk Radio News, October 30, 2002.

(7) ''Today the world is also uniting to answer the unique and urgent threat posed by Iraq. A dictator who has used weapons of mass destruction on his own people must not be allowed to produce or possess those weapons. We will not permit Saddam Hussein to blackmail and/or terrorize nations which love freedom.'' Speech by President Bush to Prague Atlantic Student Summit, November 20, 2002.

(8) ''But the risk of doing nothing, the risk of the security of this country being jeopardized at the hands of a madman with weapons of mass destruction far exceeds the risk of any action we may be forced to take.'' President Bush Meets with National Economic Council at White House, February 25, 2003.

(B) In furtherance of his fraudulent effort to deceive Congress and the citizens of the United States into believing that Iraq and Saddam Hussein posed an imminent threat to the United States, the President allowed and authorized those acting under his direction and control, including Vice President Richard B. Cheney, former Secretary of Defense Donald Rumsfeld, and Lewis Libby, who reported directly to both the President and the Vice President, among others, to pressure intelligence analysts to tailor their assessments and to create special units outside of, and unknown to, the intelligence community in order to secretly obtain unreliable information, to manufacture intelligence, or to reinterpret raw data in ways that would support the Bush administration's plan to invade Iraq based on a false claim of urgency despite the lack of justification for such a preemptive action.

(C) The Senate Select Committee on Intelligence Report on Whether Public Statements Regarding Iraq By U.S. Government Officials Were Substantiated By Intelligence Information, which was released on June 5, 2008, concluded that:

(1) ''Statements by the President and the Vice President indicating that Saddam Hussein was prepared to give weapons of mass destruction to terrorist groups for attacks against the United States were contradicted by available intelligence information.''

Thus the President willfully and falsely misrepresented Iraq as an urgent threat requiring immediate action thereby subverting the national security interests of the United States by setting the stage for the loss of more than 4,000 United States service members; the injuries to tens of thousands of U.S. soldiers; the deaths of more than 1,000,000 Iraqi citizens since the United States invasion; the loss of approximately $527 billion in war costs which has increased our Federal debt and the ultimate costs of the war between three trillion and five trillion dollars; the loss of military readiness within the United States Armed Services due to overextension, the lack of training and lack of equipment; the loss of United States credibility in world affairs; and the decades of likely blowback created by the invasion of Iraq.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE V.—ILLEGALLY MISSPENDING FUNDS TO SECRETLY BEGIN A WAR OF AGGRESSION

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the

laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, illegally misspent funds to begin a war in secret prior to any Congressional authorization.

The president used over $2 billion in the summer of 2002 to prepare for the invasion of Iraq. First reported in Bob Woodward's book, Plan of Attack, and later confirmed by the Congressional Research Service, Bush took money appropriated by Congress for Afghanistan and other programs and—with no Congressional notification—used it to build airfields in Qatar and to make other preparations for the invasion of Iraq. This constituted a violation of Article I, Section 9 of the U.S. Constitution, as well as a violation of the War Powers Act of 1973.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE VI.—INVADING IRAQ IN VIOLATION OF THE REQUIREMENTS OF H.J. RES. 114.

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', exceeded his Constitutional authority to wage war by invading Iraq in 2003 without meeting the requirements of H.J. Res. 114, the ''Authorization for Use of Military Force Against Iraq Resolution of 2002'' to wit:

(1) H.J. Res. 114 contains several Whereas clauses consistent with statements being made by the White House at the time regarding the threat from Iraq as evidenced by the following:

(A) H.J. Res. 114 states ''Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;''; and

(B) H.J. Res. 114 states ''Whereas members of Al Qaeda, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;''.

(2) H.J. Res. 114 states that the President must provide a determination, the truthfulness of which is implied, that military force is necessary in order to use the authorization, as evidenced by the following:

(A) Section 3 of H.J. Res. 114 states:

''(b) PRESIDENTIAL DETERMINATION.—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq nor (B) likely lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and

(2) acting pursuant to the Constitution and Public Law 107–243 is consistent with the United States and other countries continuing to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.

(4) President George Bush knew that these statements were false as evidenced by:

(A) INFORMATION PROVIDED WITH ARTICLE I, II, III, IV AND V.

(B) A statement by President George Bush in an interview with Tony Blair on January 31st 2003: [WH]

Reporter: ''One question for you both. Do you believe that there is a link between Saddam Hussein, a direct link, and the men who attacked on September the 11th?''

President Bush: ''I can't make that claim''

(C) An article on February 19th by Terrorism expert Rohan Gunaratna states ''I could find no evidence of links between Iraq and Al Qaeda. The documentation and interviews indicated that Al Qaeda regarded Saddam, a secular leader, as an infidel.'' [InternationalHeraldTribune]

(D) According to a February 2nd, 2003 article in the New York Times: [NYT]

At the Federal Bureau of Investigation, some investigators said they were baffled by the Bush administration's insistence on a solid link between Iraq and Osama bin Laden's network. ''We've been looking at this hard for more than a year and you know what, we just don't think it's there,'' a government official said.

(5) Section 3C of HJRes 114 states that ''Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.''

(6) The War Powers Resolution Section 9(d)(1) states:

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or

(7) The United Nations Charter was an existing treaty and, as shown in Article VIII, the invasion of Iraq violated that treaty.

(8) President George Bush knowingly failed to meet the requirements of HJRes 114 and violated the requirement of the War Powers Resolution and, thereby, invaded Iraq without the authority of Congress.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE VII.—INVADING IRAQ ABSENT A DECLARATION OF WAR

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has launched a war against Iraq absent any congressional declaration of war or equivalent action.

Article I, Section 8, Clause 11 (the War Powers Clause) makes clear that the United States Congress holds the exclusive power to decide whether or not to send the nation into war. ''The Congress,'' the War Powers Clause states, ''shall have power . . . To declare war . . .''

The October 2002 congressional resolution on Iraq did not constitute a declaration of war or equivalent action. The resolution stated: ''The President is authorized to use the Armed Forces of the United States as he deems necessary and appropriate in order to 1) defend the national security of the United States against the continuing threat posed by Iraq; and 2) enforce all relevant United Nations Security Council resolutions regarding Iraq.'' The resolution unlawfully sought to delegate to the President the decision of whether or not to initiate a war against Iraq, based on whether he deemed it ''necessary and appropriate.'' The Constitution does not allow Congress to delegate this exclusive power to the President, nor does it allow the President to seize this power.

In March 2003, the President launched a war against Iraq without any constitutional authority.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE VIII.—INVADING IRAQ, A SOVEREIGN NATION, IN VIOLATION OF THE UN CHARTER AND INTERNATIONAL CRIMINAL LAW

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', violated United States law by invading the sovereign country of Iraq in violation of the United Nations Charter to wit:

(1) International Laws ratified by Congress are part of United States Law and must be followed as evidenced by the following:

(A) Article VI of the United States Constitution, which states ''This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;''

(2) The UN Charter, which entered into force following ratification by the United States in 1945, requires Security Council approval for the use of force except for self-defense against an armed attack as evidenced by the following:

(A) Chapter 1, Article 2 of the United Nations Charter states:

''3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

''4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.''

(B) Chapter 7, Article 51 of the United Nations Charter states:

''51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.''

(3) There was no armed attack upon the United States by Iraq.

(4) The Security Council did not vote to approve the use of force against Iraq as evidenced by:

(A) A United Nation Press release which states that the United States had failed to convince the Security Council to approve the use of military force against Iraq. [UN]

(5) President Bush directed the United States military to invade Iraq on March 19th, 2003 in violation of the UN Charter and, therefore, in violation of United States Law as evidenced by the following:

(A) A letter from President Bush to Congress dated March 21st, 2003 stating ''I directed U.S. Armed Forces, operating with other coalition forces, to commence combat operations on March 19, 2003, against Iraq.'' [WH]

(B) On September 16, 2004 Kofi Annan, the Secretary General of the United Nations, speaking on the invasion, said, ''I have indicated it was not in conformity with the UN charter. From our point of view, from the charter point of view, it was illegal.'' [BBC]

(C) The consequence of the instant and direction of President George W. Bush, in ordering an attack upon Iraq, a sovereign nation is in direct violation of United States Code, Title 18, Part 1, Chapter 118, Section 2441, governing the offense of war crimes.

(6) In the course of invading and occupying Iraq, the President, as Commander in Chief, has taken responsibility for the targeting of civilians, journalists, hospitals, and ambulances, use of antipersonnel weapons including cluster bombs in densely settled urban areas, the use of white phosphorous as a weapon, depleted uranium weapons, and the use of a new version of napalm found in Mark 77 firebombs. Under the direction of President George Bush the United States has engaged in collective punishment of Iraqi civilian populations, including but not limited to blocking roads, cutting electricity and water, destroying fuel stations, planting bombs in farm fields, demolishing houses, and plowing over orchards.

(A) Under the principle of ''command responsibility'', i.e., that a de jure command can be civilian as well as military, and can apply to the policy command of heads of state, said command brings President George Bush within the reach of international criminal law under the Additional Protocol I of June 8, 1977 to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, Article 86(2). The United States is a state signatory to Additional Protocol I, on December 12, 1977.

(B) Furthermore, Article 85(3) of said Protocol I defines as a grave breach making a civilian population or individual civilians the object of attacks. This offense, together with the principle of command responsibility, places President George Bush's conduct under the reach of the same law and principles described as the basis for war crimes prosecution at Nuremburg, under Article 6 of the Charter of the Nuremberg Tribunals: including crimes against peace, violations of the laws and customs of war and crimes against humanity, similarly codified in the Rome Statute of the International Criminal Court, Articles 5 through 8.

(C) The Lancet Report has established massive civilian casualties in Iraq as a result of the United States' invasion and occupation of that country.

(D) International laws governing wars of aggression are completely prohibited under the legal principle of jus cogens, whether or not a nation has signed or ratified a particular international agreement.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office

ARTICLE IX.—FAILING TO PROVIDE TROOPS WITH BODY ARMOR AND VEHICLE ARMOR

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, together with the Vice President, has been responsible for the deaths of members of the U.S. military and serious injury and trauma to other soldiers, by failing to provide available body armor and vehicle armor.

While engaging in an invasion and occupation of choice, not fought in self-defense, and not launched in accordance with any timetable other than the President's choosing, President Bush sent U.S. troops into danger without providing them with armor. This shortcoming has been known for years, during which time, the President has chosen to allow soldiers and marines to continue to face unnecessary risk to life and limb rather then providing them with armor.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE X.—FALSIFYING ACCOUNTS OF U.S. TROOP DEATHS AND INJURIES FOR POLITICAL PURPOSES

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, together with the Vice President, promoted false propaganda stories about members of the United States military, including individuals both dead and injured.

The White House and the Department of Defense (DOD) in 2004 promoted a false account of the death of Specialist Pat Tillman, reporting that he had died in a hostile exchange, delaying release of the information that he had died from friendly fire, shot in the forehead three times in a manner that led investigating doctors to believe he had been shot at close range.

A 2005 report by Brig. Gen. Gary M. Jones reported that in the days immediately following Specialist Tillman's death, U.S. Army investigators were aware that Specialist Tillman was killed by friendly fire, shot three times to the head, and that senior Army commanders, including Gen. John Abizaid, knew of this fact within days of the shooting but nevertheless approved the awarding of the Silver Star, Purple Heart, and a posthumous promotion.

On April 24, 2007, Spc. Bryan O'Neal, the last soldier to see Specialist Pat Tillman alive, testified before the House Oversight and Government Reform Committee that he was warned by superiors not to divulge information that a fellow soldier killed Specialist Tillman, especially to the Tillman family. The White House refused to provide requested documents to the committee, citing ''executive branch confidentiality interests.''

The White House and DOD in 2003 promoted a false account of the injury of Jessica Dawn Lynch, reporting that she had been captured in a hostile exchange and had been dramatically rescued. On April 2, 2003, the DOD released a video of the rescue and claimed that Lynch had stab and bullet wounds, and that she had been slapped about on her hospital bed and interrogated. Iraqi doctors and nurses later interviewed, including Dr. Harith Al-Houssona, a doctor in the Nasirya hospital, described Lynch's injuries as ''a broken arm, a broken thigh, and a dislocated ankle.'' According to Al-Houssona, there was no sign of gunshot or stab wounds, and Lynch's injuries were consistent with those that would be suffered in a car accident. Al-Houssona's claims were later confirmed in a U.S. Army report leaked on July 10, 2003.

Lynch denied that she fought or was wounded fighting, telling Diane Sawyer that the Pentagon ''used me to symbolize all this stuff. It's wrong. I don't know why they filmed [my rescue] or why they say these things. . . .I did not shoot, not a round, nothing. I went down praying to my knees. And that's the last I remember.'' She reported excellent treatment in Iraq, and that one person in the hospital even sang to her to help her feel at home.

On April 24, 2007 Lynch testified before the House Committee on Oversight and Government Reform:

''[Right after my capture], tales of great heroism were being told. My parent's home in Wirt County was under siege of the media all repeating the story of the little girl Rambo from the hills who went down fighting. It was not true. . . . I am still confused as to why they chose to lie.''

The White House had heavily promoted the false story of Lynch's rescue, including in a speech by President Bush on April 28, 2003. After the fiction was exposed, the President awarded Lynch the Bronze Star.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XI.—ESTABLISHMENT OF PERMANENT U.S. MILITARY BASES IN IRAQ

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has violated an act of Congress that he himself signed into law by using public funds to construct permanent U.S. military bases in Iraq.

On January 28, 2008, President George W. Bush signed into law the National Defense Authorization Act for fiscal year 2008 (H.R. 4986). Noting that the Act ''authorizes funding for the defense of the United States and its interests abroad, for military construction, and for national security-related energy programs,'' the president added the following ''signing statement'':

''Provisions of the Act, including sections 841, 846, 1079, and 1222, purport to impose re-

quirements that could inhibit the President's ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief. The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President.''

Section 1222 clearly prohibits the expenditure of money for the purpose of establishing permanent U.S. military bases in Iraq. The construction of over $1 billion in U.S. military bases in Iraq, including runways for aircraft, continues despite congressional intent, as the Administration intends to force upon the Iraqi government such terms which will assure the bases remain in Iraq.

Iraqi officials have informed Members of Congress in May 2008 of the strong opposition within the Iraqi parliament and throughout Iraq to the agreement that the administration is trying to negotiate with Iraqi Prime Minister Nouri al-Maliki. The agreement seeks to assure a long-term U.S. presence in Iraq of which military bases are the most obvious, sufficient and necessary construct, thus clearly defying Congressional intent as to the matter and meaning of ''permanency.''

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XII.—INITIATING A WAR AGAINST IRAQ FOR CONTROL OF THAT NATION'S NATURAL RESOURCES

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, together with the Vice President, invaded and occupied a foreign nation for the purpose, among other purposes, of seizing control of that nation's oil.

The White House and its representatives in Iraq have, since the occupation of Baghdad began, attempted to gain control of Iraqi oil. This effort has included pressuring the new Iraqi government to pass a hydrocarbon law. Within weeks of the fall of Saddam Hussein in 2003, the U.S. Agency for International Development (USAid) awarded a $240 million contract to Bearing Point, a private U.S. company. A Bearing Point employee, based in the U.S. embassy in Baghdad, was hired to advise the Iraqi Ministry of Oil on drawing up the new hydrocarbon law. The draft law places executives of foreign oil companies on a council with the task of approving their own contracts with Iraq; it denies the Iraqi National Oil Company exclusive rights for the exploration, development, production, transportation, and marketing of Iraqi oil, and allows foreign companies to control Iraqi oil fields containing 80 percent of Iraqi oil for up to 35 years through contracts that can remain secret for up to 2 months. The draft law itself contains secret appendices.

President Bush provided unrelated reasons for the invasion of Iraq to the public and Congress, but those reasons have been established to have been categorically fraudulent, as evidenced by the herein mentioned Articles of Impeachment I, II, III, IV, VI, and VII.

Parallel to the development of plans for war against Iraq, the U.S. State Department's Future of Iraq project, begun as early as April 2002, involved meetings in Washington and London of 17 working groups, each composed of 10 to 20 Iraqi exiles and international experts selected by the State Department. The Oil and Energy working group met four times between December 2002 and April 2003. Ibrahim Bahr al-Uloum, later the Iraqi Oil Minister, was a member of the group, which concluded that Iraq ''should be opened to international oil companies as quickly as possible after the war,'' and that, ''the country should establish a conducive business environment to attract investment of oil and gas resources.'' The same group recommended production-sharing agreements with foreign oil companies, the same approach found in the draft hydrocarbon law, and control over Iraq's oil resources remains a prime objective of the Bush Administration.

Prior to his election as Vice President, Dick Cheney, then-CEO of Halliburton, in a speech at the Institute of Petroleum in 1999 demonstrated a keen awareness of the sensitive economic and geopolitical role of Middle East oil resources saying: ''By 2010, we will need on the order of an additional 50 million barrels a day. So where is the oil going to come from? Governments and national oil companies are obviously controlling about 90 percent of the assets. Oil remains fundamentally a government business. While many regions of the world offer great oil opportunities, the Middle East, with two-thirds of the world's oil and lowest cost, is still where the prize ultimately lies. Even though companies are anxious for greater access there, progress continues to be slow.''

The Vice President led the work of a secret energy task force, as described in Article XXXII below, a task force that focused on, among other things, the acquisition of Iraqi oil through developing a controlling private corporate interest in said oil.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XIII.—CREATING A SECRET TASK FORCE TO DEVELOP ENERGY AND MILITARY POLICIES WITH RESPECT TO IRAQ AND OTHER COUNTRIES

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has both personally and acting through his agents and subordinates, together with the Vice President, created a secret task force to guide our nation's energy policy and military policy, and undermined Congress' ability to legislate by thwarting attempts to investigate the nature of that policy.

A Government Accountability Office (GAO) Report on the Cheney Energy Task Force, in August 2003, described the creation of this task force as follows:

''In a January 29, 2001, memorandum, the President established NEPDG [the National Energy Policy Development Group]—comprised of the Vice President, nine cabinet-level officials, and four other senior administration officials—to gather information, deliberate, and make recommendations to the President by the end of fiscal year 2001. The President called on the Vice President to chair the group, direct its work and, as necessary, establish subordinate working groups to assist NEPDG.''

The four ''other senior administration officials were the Director of the Office of Management and Budget, the Assistant to the President and Deputy Chief of Staff for Policy, the Assistant to the President for Economic Policy, and the Deputy Assistant to the President for Intergovernmental Affairs.

The GAO report found that: ''In developing the National Energy Policy report, the NEPDG Principals, Support Group, and participating agency officials and staff met with, solicited input from, or received information and advice from nonfederal energy stakeholders, principally petroleum, coal, nuclear, natural gas, and electricity industry representatives and lobbyists. The extent to which submissions from any of these stakeholders were solicited, influenced policy deliberations, or were incorporated into the final report cannot be determined based on the limited information made available to GAO. NEPDG met and conducted its work in two distinct phases: the first phase culminated in a March 19, 2001, briefing to the President on challenges relating to energy supply and the resulting economic impact; the second phase ended with the May 16, 2001, presentation of the final report to the President. The Office of the Vice President's (OVP) unwillingness to provide the NEPDG records or other related information precluded GAO from fully achieving its objectives and substantially limited GAO's ability to comprehensively analyze the NEPDG process. associated with that process.

''None of the key federal entities involved in the NEPDG effort provided GAO with a complete accounting of the costs that they incurred during the development of the National Energy Policy report. The two federal entities responsible for funding the NEPDG effort—OVP and the Department of Energy (DOE)—did not provide the comprehensive cost information that GAO requested. OVP provided GAO with 77 pages of information, two-thirds of which contained no cost information while the remaining one-third contained some miscellaneous information of little to no usefulness. OVP stated that it would not provide any additional information. DOE, the Department of the Interior, and the Environmental Protection Agency (EPA) provided GAO with estimates of certain costs and salaries associated with the NEPDG effort, but these estimates, all calculated in different ways, were not comprehensive.''

In 2003, the Commerce Department disclosed a partial collection of materials from the NEPDG, including documents, maps, and charts, dated March 2001, of Iraq's, Saudi Arabia's and the United Arab Emirates' oil fields, pipelines, refineries, tanker terminals, and development projects.

On November 16, 2005, the Washington Post reported on a White House document showing that oil company executives had met with the NEPDG, something that some of those same executives had just that week denied in Congressional testimony. The Bush Administration had not corrected the inaccurate testimony.

On July 18, 2007, the Washington Post reported the full list of names of those who had met with the NEPDG.

In 1998 Kenneth Derr, then chief executive of Chevron, told a San Francisco audience, ''Iraq possesses huge reserves of oil and gas, reserves I'd love Chevron to have access to.'' According to the GAO report, Chevron provided detailed advice to the NEPDG.

In March, 2001, the NEPDG recommended that the United States Government support

initiatives by Middle Eastern countries ''to open up areas of their energy sectors to foreign investment.'' Following the invasion of Iraq, the United States has pressured the new Iraqi parliament to pass a hydrocarbon law that would do exactly that. The draft law, if passed, would take the majority of Iraq's oil out of the exclusive hands of the Iraqi Government and open it to international oil companies for a generation or more. The Bush administration hired Bearing Point, a U.S. company, to help write the law in 2004. It was submitted to the Iraqi Council of Representatives in May 2007.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XIV.—MISPRISION OF A FELONY, MISUSE AND EXPOSURE OF CLASSIFIED INFORMATION AND OBSTRUCTION OF JUSTICE IN THE MATTER OF VALERIE PLAME WILSON, CLANDESTINE AGENT OF THE CENTRAL INTELLIGENCE AGENCY

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President,

(1) suppressed material information;

(2) selectively declassified information for the improper purposes of retaliating against a whistleblower and presenting a misleading picture of the alleged threat from Iraq;

(3) facilitated the exposure of the identity of Valerie Plame Wilson who had theretofore been employed as a covert CIA operative;

(4) failed to investigate the improper leaks of classified information from within his administration;

(5) failed to cooperate with an investigation into possible federal violations resulting from this activity; and

(6) finally, entirely undermined the prosecution by commuting the sentence of Lewis Libby citing false and insubstantial grounds, all in an effort to prevent Congress and the citizens of the United States from discovering the deceitful nature of the President's claimed justifications for the invasion of Iraq.

In facilitating this exposure of classified information and the subsequent cover-up, in all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XV.—PROVIDING IMMUNITY FROM PROSECUTION FOR CRIMINAL CONTRACTORS IN IRAQ

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, established policies granting United States government contractors and their employees in Iraq immunity from Iraqi law, U.S. law, and international law.

Lewis Paul Bremer III, then-Director of Reconstruction and Humanitarian Assistance for post-war Iraq, on June 27, 2004, issued Coalition Provisional Authority Order Number 17, which granted members of the U.S. military, U.S. mercenaries, and other U.S. contractor employees immunity from Iraqi law.

The Bush Administration has chosen not to apply the Uniform Code of Military Justice or United States law to mercenaries and other contractors employed by the United States government in Iraq.

Operating free of Iraqi or U.S. law, mercenaries have killed many Iraqi civilians in a manner that observers have described as aggression and not as self-defense. Many U.S. contractors have also alleged that they have been the victims of aggression (in several cases of rape) by their fellow contract employees in Iraq. These charges have not been brought to trial, and in several cases the contracting companies and the U.S. State Department have worked together in attempting to cover them up.

Under the Fourth Geneva Convention, to which the United States is party, and which under Article VI of the U.S. Constitution is therefore the supreme law of the United States, it is the responsibility of an occupying force to ensure the protection and human rights of the civilian population. The efforts of President Bush and his subordinates to attempt to establish a lawless zone in Iraq are in violation of the law.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XVI.—RECKLESS MISSPENDING AND WASTE OF U.S. TAX DOLLARS IN CONNECTION WITH IRAQ CONTRACTORS

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, recklessly wasted public funds on contracts awarded to close associates, including companies guilty of defrauding the government in the past, contracts awarded without competitive bidding, ''cost-plus'' contracts designed to encourage cost overruns, and contracts not requiring satisfactory completion of the work. These failures have been the rule, not the exception, in the awarding of contracts for work in the United States and abroad over the past seven years. Repeated exposure of fraud and waste has not been met by the president with correction of systemic problems, but rather with retribution against whistleblowers.

The House Committee on Oversight and Government Reform reported on Iraq reconstruction contracting:

''From the beginning, the Administration adopted a flawed contracting approach in Iraq. Instead of maximizing competition, the Administration opted to award no-bid, cost-plus contracts to politically connected contractors. Halliburton's secret $7 billion contract to restore Iraq's oil infrastructure is the prime example. Under this no-bid, cost-plus contract, Halliburton was reimbursed for its costs and then received an additional fee, which was a percentage of its costs. This created an incentive for Halliburton to run up its costs in order to increase its potential profit.

''Even after the Administration claimed it was awarding Iraq contracts competitively in early 2004, real price competition was missing. Iraq was divided geographically and by economic sector into a handful of fiefdoms. Individual contractors were then awarded monopoly contracts for all of the work within given fiefdoms. Because these monopoly contracts were awarded before specific projects were identified, there was no actual price competition for more than 2,000 projects.

''In the absence of price competition, rigorous government oversight becomes essential for accountability. Yet the Administration turned much of the contract oversight work over to private companies with blatant conflicts of interest. Oversight contractors oversaw their business partners and, in some cases, were placed in a position to assist their own construction work under separate monopoly construction contracts. . . .

''Under Halliburton's two largest Iraq contracts, Pentagon auditors found $1 billion in 'questioned' costs and over $400 million in 'unsupported' costs. Former Halliburton employees testified that the company charged $45 for cases of soda, billed $100 to clean 15-pound bags of laundry, and insisted on housing its staff at the five-star Kempinski hotel in Kuwait. Halliburton truck drivers testified that the company 'torched' brand new $85,000 trucks rather than perform relatively minor repairs and regular maintenance. Halliburton procurement officials described the company's informal motto in Iraq as 'Don't worry about price. It's cost-plus.' A Halliburton manager was indicted for 'major fraud against the United States' for allegedly billing more than $5.5 billion for work that should have cost only $685,000 in exchange for a $1 million kickback from a Kuwaiti subcontractor. . . .

''The Air Force found that another U.S. government contractor, Custer Battles, set up shell subcontractors to inflate prices. Those overcharges were passed along to the U.S. government under the company's cost-plus contract to provide security for Baghdad International Airport. In one case, the company allegedly took Iraqi-owned forklifts, re-painted them, and leased them to the U.S. government.

''Despite the spending of billions of taxpayer dollars, U.S. reconstruction efforts in keys sectors of the Iraqi economy are failing. Over two years after the U.S.-led invasion of Iraq, oil and electricity production has fallen below pre-war levels. The Administration has failed to even measure how many Iraqis lack access to drinkable water.''

''Constitution in Crisis,'' a book by Congressman John Conyers, details the Bush Administration's response when contract abuse is made public:

''Bunnatine Greenhouse was the chief contracting officer at the Army Corps of Engineers, the agency that has managed much of the reconstruction work in Iraq. In October 2004, Ms. Greenhouse came forward and revealed that top Pentagon officials showed improper favoritism to Halliburton when awarding military contracts to Halliburton subsidiary Kellogg Brown & Root (KBR). Greenhouse stated that when the Pentagon awarded Halliburton a five-year $7 billion contract, it pressured her to withdraw her objections, actions which she claimed were unprecedented in her experience.

''On June 27, 2005, Ms. Greenhouse testified before Congress, detailing that the contract award process was compromised by improper influence by political appointees, participation by Halliburton officials in meetings where bidding requirements were discussed, and a lack of competition. She stated that the Halliburton contracts represented ''the most blatant and improper contract abuse I have witnessed during the course of my professional career.'' Days before the hearing, the acting general counsel of the Army Corps of Engineers paid Ms. Greenhouse a visit and reportedly let it be known that it would not be in her best interest to appear voluntarily.

''On August 27, 2005, the Army demoted Ms. Greenhouse, removing her from the elite Senior Executive Service and transferring her to a lesser job in the corps' civil works division. As Frank Rich of The New York Times described the situation, '[H]er crime was not obstructing justice but pursuing it by vehemently questioning irregularities in the awarding of some $7 billion worth of no-bid contracts in Iraq to the Halliburton subsidiary Kellogg Brown Root.' The demotion was in apparent retaliation for her speaking out against the abuses, even though she previously had stellar reviews and over 20 years of experience in military procurement.''

The House Committee on Oversight and Government Reform reports on domestic contracting:

''The Administration's domestic contracting record is no better than its record on Iraq. Waste, fraud, and abuse appear to be the rule rather than the exception. . . .

''A Transportation Security Administration (TSA) cost-plus contract with NCS Pearson, Inc., to hire federal airport screeners was plagued by poor management and egregious waste. Pentagon auditors challenged $303 million (over 40%) of the $741 million spent by Pearson under the contract. The auditors detailed numerous concerns with the charges of Pearson and its subcontractors, such as '$20-an-hour temporary workers billed to the government at $48 per hour, subcontractors who signed out $5,000 in cash at a time with no supporting documents, $377,273.75 in unsubstantiated long distance phone calls, $514,201 to rent tents that flooded in a rainstorm, [and] $4.4 million in ''no show'' fees for job candidates who did not appear for tests.' A Pearson employee who supervised Pearson's hiring efforts at 43 sites in the U.S. described the contract as 'a waste a taxpayer's money.' The CEO of one Pearson subcontractor paid herself $5.4 million for nine months work and provided herself with a $270,000 pension. . . .

''The Administration is spending $239 million on the Integrated Surveillance and Intelligence System, a no-bid contract to provide thousands of cameras and sensors to monitor activity on the Mexican and Canadian borders. Auditors found that the contractor, International Microwave Corp., billed for work it never did and charged for equipment it never provided, 'creat[ing] a potential for overpayments of almost $13 million.' Moreover, the border monitoring system reportedly does not work. . . .

''After spending more than $4.5 billion on screening equipment for the nation's entry points, the Department of Homeland Security is now 'moving to replace or alter much of' it because 'it is ineffective, unreliable or too expensive to operate.' For example, radiation monitors at ports and borders reportedly could not 'differentiate between radiation emitted by a nuclear bomb and naturally occurring radiation from everyday material like cat litter or ceramic tile.' . . .

''The TSA awarded Boeing a cost-plus contract to install over 1,000 explosive detection systems for airline passenger luggage. After installation, the machines 'began to register false alarms' and '[s]creeners were forced to open and hand-check bags.' To reduce the number of false alarms, the sensitivity of the machines was lowered, which reduced the effectiveness of the detectors. Despite these serious problems, Boeing received an $82 million profit that the Inspector General determined to be 'excessive.' . . .

''The FBI spent $170 million on a 'Virtual Case File' system that does not operate as required. After three years of work under a cost-plus contract failed to produce a functional system, the FBI scrapped the program and began work on the new 'Sentinel' Case File System. . . .

''The Department of Homeland Security Inspector General found that taxpayer dollars were being lavished on perks for agency officials. One IG report found that TSA spent over $400,000 on its first leader's executive office suite. Another found that TSA spent $350,000 on a gold-plated gym. . . .

''According to news reports, Pentagon auditors . . . examined a contract between the Transportation Security Administration (TSA) and Unisys, a technology and consulting company, for the upgrade of airport computer networks. Among other irregularities, government auditors found that Unisys may have overbilled for as much as 171,000 hours of labor and overtime by charging for employees at up to twice their actual rate of compensation. While the cost ceiling for the contract was set at $1 billion, Unisys has reportedly billed the government $940 million with more than half of the seven-year contract remaining and more than half of the TSA-monitored airports still lacking upgraded networks.''

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XVII.—ILLEGAL DETENTION: DETAINING INDEFINITELY AND WITHOUT CHARGE PERSONS BOTH U.S. CITIZENS AND FOREIGN CAPTIVES

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, violated United States and International Law and the U.S. Constitution by illegally detaining indefinitely and without charge persons both U.S. citizens and foreign captives.

In a statement on Feb. 7, 2002, President Bush declared that in the U.S. fight against Al Qaeda, ''none of the provisions of Geneva apply,'' thus rejecting the Geneva Conventions that protect captives in wars and other conflicts. By that time, the administration was already transporting captives from the war in Afghanistan, both alleged Al Qaeda members and supporters, and also Afghans accused of being fighters in the army of the Taliban government, to U.S.-run prisons in Afghanistan and to the detention facility at Guantanamo Bay, Cuba. The round-up and detention without charge of Muslim noncitizens inside the U.S. began almost immediately after the September 11, 2001 attacks on the World Trade Center and the Pentagon, with some being held as long as nine months. The U.S., on orders of the president, began capturing and detaining without charge alleged terror suspects in other countries and detaining them abroad and at the U.S. Naval base in Guantanamo.

Many of these detainees have been subjected to systematic abuse, including beatings, which have been subsequently documented by news reports, photographic evidence, testimony in Congress, lawsuits, and in the case of detainees in the U.S., by an investigation conducted by the Justice Department's Office of the Inspector General.

In violation of U.S. law and the Geneva Conventions, the Bush Administration instructed the Department of Justice and the U.S. Department of Defense to refuse to provide the identities or locations of these detainees, despite requests from Congress and from attorneys for the detainees. The president even declared the right to detain U.S. citizens indefinitely, without charge and without providing them access to counsel or the courts, thus depriving them of their constitutional and basic human rights. Several of those U.S. citizens were held in military brigs in solitary confinement for as long as three years before being either released or transferred to civilian detention.

Detainees in U.S. custody in Iraq and Guantanamo have, in violation of the Geneva Conventions, been hidden from and denied visits by the International Red Cross organization, while thousands of others in Iraq, Guantanamo, Afghanistan, ships in foreign off-shore sites, and an unknown number of so-called ''black sites'' around the world have been denied any opportunity to challenge their detentions. The president, acting on his own claimed authority, has declared the hundreds of detainees at Guantanamo Bay to be ''enemy combatants'' not subject to U.S. law and not even subject to military law, but nonetheless potentially liable to the death penalty.

The detention of individuals without due process violates the 5th Amendment. While the Bush administration has been rebuked in several court cases, most recently that of Ali al-Marri, it continues to attempt to exceed constitutional limits.

In all of these actions violating U.S. and International law, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XVIII.—TORTURE: SECRETLY AUTHORIZING, AND ENCOURAGING THE USE OF TORTURE AGAINST CAPTIVES IN AFGHANISTAN, IRAQ, AND OTHER PLACES, AS A MATTER OF OFFICIAL POLICY

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, violated United States and International Law and the U.S. Constitution by secretly authorizing and encouraging the use of torture against captives in Afghanistan, Iraq in connection with the so-called ''war'' on terror.

In violation of the Constitution, U.S. law, the Geneva Conventions (to which the U.S. is a signatory), and in violation of basic human rights, torture has been authorized by the President and his administration as official

policy. Water-boarding, beatings, faked executions, confinement in extreme cold or extreme heat, prolonged enforcement of painful stress positions, sleep deprivation, sexual humiliation, and the defiling of religious articles have been practiced and exposed as routine at Guantanamo, at Abu Ghraib Prison and other U.S. detention sites in Iraq, and at Bagram Air Base in Afghanistan. The president, besides bearing responsibility for authorizing the use of torture, also as Commander in Chief, bears ultimate responsibility for the failure to halt these practices and to punish those responsible once they were exposed.

The administration has sought to claim the abuse of captives is not torture, by redefining torture. An August 1, 2002 memorandum from the Administration's Office of Legal Counsel Jay S. Bybee addressed to White House Counsel Alberto R. Gonzales concluded that to constitute torture, any pain inflicted must be akin to that accompanying ''serious physical injury, such as organ failure, impairment of bodily function, or even death.'' The memorandum went on to state that even should an act constitute torture under that minimal definition, it might still be permissible if applied to ''interrogations undertaken pursuant to the President's Commander-in-Chief powers.'' The memorandum further asserted that ''necessity or self-defense could provide justifications that would eliminate any criminal liability.''

This effort to redefine torture by calling certain practices simply ''enhanced interrogation techniques'' flies in the face of the Third Geneva Convention Relating to the Treatment of Prisoners of War, which states that ''No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.''

Torture is further prohibited by the Universal Declaration of Human Rights, the paramount international human rights statement adopted unanimously by the United Nations General Assembly, including the United States, in 1948. Torture and other cruel, inhuman or degrading treatment or punishment is also prohibited by international treaties ratified by the United States: the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

When the Congress, in the Defense Authorization Act of 2006, overwhelmingly passed a measure banning torture and sent it to the President's desk for signature, the President, who together with his vice president, had fought hard to block passage of the amendment, signed it, but then quietly appended a signing statement in which he pointedly asserted that as Commander-in-Chief, he was not bound to obey its strictures.

The administration's encouragement of and failure to prevent torture of American captives in the wars in Iraq and Afghanistan, and in the battle against terrorism, has undermined the rule of law in the U.S. and in the US military, and has seriously damaged both the effort to combat global terrorism, and more broadly, America's image abroad. In his effort to hide torture by U.S. military forces and the CIA, the president has defied Congress and has lied to the American people, repeatedly claiming that the U.S. ''does not torture.''

In all of these actions and decisions in violation of U.S. and International law, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XIX.—RENDITION: KIDNAPPING PEOPLE AND TAKING THEM AGAINST THEIR WILL TO ''BLACK SITES'' LOCATED IN OTHER NATIONS, INCLUDING NATIONS KNOWN TO PRACTICE TORTURE

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, violated United States and International Law and the U.S. Constitution by kidnapping people and renditioning them to ''black sites'' located in other nations, including nations known to practice torture.

The president has publicly admitted that since the 9–11 attacks in 2001, the U.S. has been kidnapping and transporting against the will of the subject (renditioning) in its so-called ''war'' on terror—even people captured by U.S. personnel in friendly nations like Sweden, Germany, Macedonia and Italy—and ferrying them to places like Bagram Airbase in Afghanistan, and to prisons operated in Eastern European countries, African Countries and Middle Eastern countries where security forces are known to practice torture.

These people are captured and held indefinitely, without any charges being filed, and are held without being identified to the Red Cross, or to their families. Many are clearly innocent, and several cases, including one in Canada and one in Germany, have demonstrably been shown subsequently to have been in error, because of a similarity of names or because of misinformation provided to U.S. authorities.

Such a policy is in clear violation of U.S. and International Law, and has placed the United States in the position of a pariah state. The CIA has no law enforcement authority, and cannot legally arrest or detain anyone. The program of ''extraordinary rendition'' authorized by the president is the substantial equivalent of the policies of ''disappearing'' people, practices widely practiced and universally condemned in the military dictatorships of Latin America during the late 20th Century.

The administration has claimed that prior administrations have practiced extraordinary rendition, but, while this is technically true, earlier renditions were used only to capture people with outstanding arrest warrants or convictions who were outside in order to deliver them to stand trial or serve their sentences in the U.S. The president has refused to divulge how many people have been subject to extraordinary rendition since September, 2001. It is possible that some have died in captivity. As one U.S. official has stated off the record, regarding the program, Some of those who were renditioned were later delivered to Guantanamo, while others were sent there directly. An example of this is the case of six Algerian Bosnians who, immediately after being cleared by the Supreme Court of Bosnia Herzegovina in January 2002 of allegedly plotting to attack the U.S. and UK embassies, were captured, bound and gagged by U.S. special forces and renditioned to Guantanamo.

In perhaps the most egregious proven case of rendition, Maher Arar, a Canadian citizen born in Syria, was picked up in September 2002 while transiting through New York's JFK airport on his way home to Canada. Immigration and FBI officials detained and interrogated him for nearly two weeks, illegally denying him his rights to access counsel, the Canadian consulate, and the courts. Executive branch officials asked him if he would volunteer to go to Syria, where he hadn't been in 15 years, and Maher refused

Maher was put on a private jet plane operated by the CIA and sent to Jordan, where he was beaten for 8 hours, and then delivered to Syria, where he was beaten and interrogated for 18 hours a day for a couple of weeks. He was whipped on his back and hands with a 2 inch thick electric cable and asked questions similar to those he had been asked in the United States. For over ten months Maher was held in an underground grave-like cell—3 6 7 feet—which was damp and cold, and in which the only light came in through a hole in the ceiling. After a year of this, Maher was released without any charges. He is now back home in Canada with his family. Upon his release, the Syrian Government announced he had no links to Al Qaeda, and the Canadian Government has also said they've found no links to Al Qaeda. The Canadian Government launched a Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, to investigate the role of Canadian officials, but the Bush Administration has refused to cooperate with the Inquiry.

Hundreds of flights of CIA-chartered planes have been documented as having passed through European countries on extraordinary rendition missions like that involving Maher Arar, but the administration refuses to state how many people have been subjects of this illegal program.

The same U.S. laws prohibiting aiding and abetting torture also prohibit sending someone to a country where there is a substantial likelihood they may be tortured. Article 3 of CAT prohibits forced return where there is a ''substantial likelihood'' that an individual ''may be in danger of'' torture, and has been implemented by federal statute. Article 7 of the ICCPR prohibits return to country of origin where individuals may be ''at risk'' of either torture or cruel, inhuman or degrading treatment.

Under international Human Rights law, transferring a POW to any nation where he or she is likely to be tortured or inhumanely treated violates Article 12 of the Third Geneva Convention, and transferring any civilian who is a protected person under the Fourth Geneva Convention is a grave breach and a criminal act.

In situations of armed conflict, both international human rights law and humanitarian law apply. A person captured in the zone of military hostilities ''must have some status under international law; he is either a prisoner of war and, as such, covered by the Third Convention, [or] a civilian covered by the Fourth Convention. . . . There is no intermediate status; nobody in enemy hands can be outside the law.'' Although the state is obligated to repatriate Prisoners of War as soon as hostilities cease, the ICRC's commentary on the 1949 Conventions states that prisoners should not be repatriated where there are serious reasons for fearing that repatriating the individual would be contrary to general principles of established international law for the protection of human beings Thus, all of the Guantanamo detainees as well as renditioned captives are protected by international human rights protections and humanitarian law.

By his actions as outlined above, the President has abused his power, broken the law, deceived the American people, and placed American military personnel, and indeed all Americans—especially those who may travel

or live abroad—at risk of similar treatment. Furthermore, in the eyes of the rest of the world, the President has made the U.S., once a model of respect for Human Rights and respect for the rule of law, into a state where international law is neither respected nor upheld.

In all of these actions and decisions in violation of United States and International law, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XX.—IMPRISONING CHILDREN

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, authorized or permitted the arrest and detention of at least 2500 children under the age of 18 as ''enemy combatants'' in Iraq, Afghanistan, and at Guantanamo Bay Naval Station in violation of the Fourth Geneva Convention relating to the treatment of ''protected persons'' and the Optional Protocol to the Geneva Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, signed by the U.S. in 2002. To wit:

In May 2008, the U.S. government reported to the United Nations that it has been holding upwards of 2,500 children under the age of 18 as ''enemy combatants'' at detention centers in Iraq, Afghanistan and at Guantanamo Bay (where there was a special center, Camp Iguana, established just for holding children). The length of these detentions has frequently exceeded a year, and in some cases has stretched to five years. Some of these detainees have reached adulthood in detention and are now not being reported as child detainees because they are no longer children.

In addition to detaining children as ''enemy combatants,'' it has been widely reported in media reports that the U.S. military in Iraq has, based upon Pentagon rules of engagement, been treating boys as young as 14 years of age as ''potential combatants,'' subject to arrest and even to being killed. In Fallujah, in the days ahead of the November 2004 all-out assault, Marines ringing the city were reported to be turning back into the city men and boys ''of combat age'' who were trying to flee the impending scene of battle—an act which in itself is a violation of the Geneva Conventions, which require combatants to permit anyone, combatants as well as civilians, to surrender, and to leave the scene of battle.

Under the Fourth Geneva Convention, to which the United States has been a signatory since 1949, children under the age of 15 captured in conflicts, even if they have been fighting, are to be considered victims, not prisoners. In 2002, the United States signed the Optional Protocol to the Geneva Convention on the Rights of the Child on the Involvement of children in Armed Conflict, which raised this age for this category of ''protected person'' to under 18.

The continued detention of such children, some as young as 10, by the U.S. military is a violation of both convention and protocol, and as such constitutes a war crime for which the president, as commander in chief, bears full responsibility.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXI.—MISLEADING CONGRESS AND THE AMERICAN PEOPLE ABOUT THREATS FROM IRAN, AND SUPPORTING TERRORIST ORGANIZATIONS WITHIN IRAN, WITH THE GOAL OF OVERTHROWING THE IRANIAN GOVERNMENT

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has both personally and acting through his agents and subordinates misled the Congress and the citizens of the United States about a threat of nuclear attack from the nation of Iran.

The National Intelligence Estimate released to Congress and the public on December 4, 2007, which confirmed that the government of the nation of Iran had ceased any efforts to develop nuclear weapons, was completed in 2006. Yet, the president and his aides continued to suggest during 2007 that such a nuclear threat was developing and might already exist. National Security Adviser Stephen Hadley stated at the time the National Intelligence Estimate regarding Iran was released that the president had been briefed on its findings ''in the last few months.'' Hadley's statement establishes a timeline that shows the president knowingly sought to deceive Congress and the American people about a nuclear threat that did not exist.

Hadley has stated that the president ''was basically told: stand down'' and, yet, the president and his aides continued to make false claims about the prospect that Iran was trying to ''build a nuclear weapon'' that could lead to ''World War III.''

This evidence establishes that the president actively engaged in and had full knowledge of a campaign by his administration to make a false ''case'' for an attack on Iran, thus warping the national security debate at a critical juncture and creating the prospect of an illegal and unnecessary attack on a sovereign nation.

Even after the National Intelligence Estimate was released to Congress and the American people, the president stated that he did not believe anything had changed and suggested that he and members of his administration would continue to argue that Iran should be seen as posing a threat to the United States. He did this despite the fact that United States intelligence agencies had clearly and officially stated that this was not the case.

Evidence suggests that the Bush Administration's attempts to portray Iran as a threat are part of a broader U.S. policy toward Iran. On September 30, 2001, then-Secretary of Defense Donald Rumsfeld established an official military objective of overturning the regime in Iran, as well as those in Iraq, Syria, and four other countries in the Middle East, according to a document quoted in then- Undersecretary of Defense for Policy Douglas Feith's book, ''War and Decision.''

General Wesley Clark, reports in his book ''Winning Modern Wars'' being told by a friend in the Pentagon in November 2001 that the list of governments that Rumsfeld and Deputy Secretary of Defense Paul Wolfowitz planned to overthrow included Iraq, Iran, Syria, Libya, Sudan, and Somalia. Clark writes that the list also included Lebanon.

Journalist Gareth Porter reported in May 2008 asking Feith at a public event which of the six regimes on the Clark list were included in the Rumsfeld paper, to which Feith replied ''All of them.''

Rumsfeld's aides also drafted a second version of the paper, as instructions to all military commanders in the development of ''campaign plans against terrorism''. The paper called for military commanders to assist other government agencies ''as directed'' to ''encourage populations dominated by terrorist organizations or their supporters to overthrow that domination.''

In January 2005, Seymour Hersh reported in the New Yorker Magazine that the Bush Administration had been conducting secret reconnaissance missions inside Iran at least since the summer of 2004.

In June 2005 former United Nations weapons inspector Scott Ritter reported that United States security forces had been sending members of the Mujahedeen-e Khalq (MEK) into Iranian territory. The MEK has been designated a terrorist organization by the United States, the European Union, Canada, Iraq, and Iran. Ritter reported that the United States Central Intelligence Agency (CIA) had used the MEK to carry out remote bombings in Iran.

In April 2006, Hersh reported in the New Yorker Magazine that U.S. combat troops had entered and were operating in Iran, where they were working with minority groups including the Azeris, Baluchis, and Kurds.

Also in April 2006, Larisa Alexandrovna reported on Raw Story that the U.S. Department of Defense (DOD) was working with and training the MEK, or former members of the MEK, sending them to commit acts of violence in southern Iran in areas where recent attacks had left many dead. Raw Story reported that the Pentagon had adopted the policy of supporting MEK shortly after the 2003 invasion of Iraq, and in response to the influence of Vice President Richard B. Cheney's office. Raw Story subsequently reported that no Presidential finding, and no Congressional oversight, existed on MEK operations.

In March 2007, Hersh reported in the New Yorker Magazine that the Bush administration was attempting to stem the growth of Shiite influence in the Middle East (specifically the Iranian government and Hezbollah in Lebanon) by funding violent Sunni organizations, without any Congressional authorization or oversight. Hersh said funds had been given to ''three Sunni jihadist groups . . . connected to al Qaeda'' that ''want to take on Hezbollah.''

In April 2008, the Los Angeles Times reported that conflicts with insurgent groups along Iran's borders were understood by the Iranian government as a proxy war with the United States and were leading Iran to support its allies against the United States' occupation force in Iraq. Among the groups the U.S. DOD is supporting, according to this report, is the Party for Free Life in Kurdistan, known by its Kurdish acronym, PEJAK. The United States has provided ''foodstuffs, economic assistance, medical supplies and Russian military equipment, some of it funneled through nonprofit groups.''

In May 2008, Andrew Cockburn reported on Counter Punch that President Bush, six weeks earlier had signed a secret finding authorizing a covert offensive against the Iranian regime. President Bush's secret directive covers actions across an area stretching from Lebanon to Afghanistan, and purports to sanction actions up to and including the funding of organizations like the MEK and the assassination of public officials.

All of these actions by the President and his agents and subordinates exhibit a disregard for the truth and a recklessness with regard to national security, nuclear proliferation and the global role of the United States military that is not merely unacceptable but dangerous in a commander-in- chief.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXII—CREATING SECRET LAWS

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, established a body of secret laws through the issuance of legal opinions by the Department of Justice's Office of Legal Counsel (OLC).

The OLC's March 14, 2003, interrogation memorandum (''Yoo Memorandum'') was declassified years after it served as law for the executive branch. On April 29, 2008, House Judiciary Committee Chairman John Conyers and Subcommittee on the Constitution, Civil Rights and Civil Liberties Chairman Jerrold Nadler wrote in a letter to Attorney General Michael Mukasey:

''It appears to us that there was never any legitimate basis for the purely legal analysis contained in this document to be classified in the first place. The Yoo Memorandum does not describe sources and methods of intelligence gathering, or any specific facts regarding any interrogation activities. Instead, it consists almost entirely of the Department's legal views, which are not properly kept secret from Congress and the American people. J. William Leonard, the Director of the National Archive's Office of Information Security Oversight Office, and a top expert in this field concurs, commenting that '[t]he document in question is purely a legal analysis' that contains 'nothing which would justify classification.' In addition, the Yoo Memorandum suggests an extraordinary breadth and aggressiveness of OLC's secret legal opinion-making. Much attention has rightly been given to the statement in footnote 10 in the March 14, 2003, memorandum that, in an October 23, 2001, opinion, OLC concluded 'that the Fourth Amendment had no application to domestic military operations.' As you know, we have requested a copy of that memorandum on no less than four prior occasions and we continue to demand access to this important document.

''In addition to this opinion, however, the Yoo Memorandum references at least 10 other OLC opinions on weighty matters of great interest to the American people that also do not appear to have been released. These appear to cover matters such as the power of Congress to regulate the conduct of military commissions, legal constraints on the 'military detention of United States citizens,' legal rules applicable to the boarding and searching foreign ships, the President's authority to render U.S. detainees to the custody of foreign governments, and the President's authority to breach or suspend U.S. treaty obligations. Furthermore, it has been more than five years since the Yoo Memorandum was authored, raising the question how many other such memoranda and letters have been secretly authored and utilized by the Administration.

''Indeed, a recent court filing by the Department in FOIA litigation involving the Central Intelligence Agency identifies 8 additional secret OLC opinions, dating from August 6, 2004, to February 18, 2007. Given that these reflect only OLC memoranda identified in the files of the CIA, and based on the sampling procedures under which that listing was generated, it appears that these represent only a small portion of the secret OLC memoranda generated during this time, with the true number almost certainly much higher.''

Senator Russ Feingold, in a statement during an April 30, 2008, senate hearing stated:

''It is a basic tenet of democracy that the people have a right to know the law. In keeping with this principle, the laws passed by Congress and the case law of our courts have historically been matters of public record. And when it became apparent in the middle of the 20th century that federal agencies were increasingly creating a body of non-public administrative law, Congress passed several statutes requiring this law to be made public, for the express purpose of preventing a regime of 'secret law.' That purpose today is being thwarted. Congressional enactments and agency regulations are for the most part still public. But the law that applies in this country is determined not only by statutes and regulations, but also by the controlling interpretations of courts and, in some cases, the executive branch. More and more, this body of executive and judicial law is being kept secret from the public, and too often from Congress as well. . . .

''A legal interpretation by the Justice Department's Office of Legal Counsel . . . binds the entire executive branch, just like a regulation or the ruling of a court. In the words of former OLC head Jack Goldsmith, 'These executive branch precedents are ''law'' for the executive branch.' The Yoo memorandum was, for a nine-month period in 2003 until it was withdrawn by Mr. Goldsmith, the law that this Administration followed when it came to matters of torture. And of course, that law was essentially a declaration that few if any laws applied . . .

''Another body of secret law is the controlling interpretations of the Fo reign Intelligence Surveillance Act that are issued by the Foreign Intelligence Surveillance Court. FISA, of course, is the law that governs the government's ability in intelligence investigations to conduct wiretaps and search the homes of people in the United States. Under that statute, the FISA Court is directed to evaluate wiretap and search warrant applications and decide whether the standard for issuing a warrant has been met—a largely factual evaluation that is properly done behind closed doors. But with the evolution of technology and with this Administration's efforts to get the Court's blessing for its illegal wiretapping activities, we now know that the Court's role is broader, and that it is very much engaged in substantive interpretations of the governing statute. These interpretations are as much a part of this country's surveillance law as the statute itself. Without access to them, it is impossible for Congress or the public to have an informed debate on matters that deeply affect the privacy and civil liberties of all Americans . . .

''The Administration's shroud of secrecy extends to agency rules and executive pronouncements, such as Executive Orders, that carry the force of law. Through the diligent efforts of my colleague Senator Whitehouse, we have learned that OLC has taken the position that a President can 'waive' or 'modify' a published Executive Order without any notice to the public or Congress simply by not following it.''

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXIII—VIOLATION OF THE POSSE COMITATUS ACT

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, repeatedly and illegally established programs to appropriate the power of the military for use in law enforcement. Specifically, he has contravened U.S.C. Title 18, Section 1385, originally enacted in 1878, subsequently amended as ''Use of Army and Air Force as Posse Comitatus'' and commonly known as the Posse Comitatus Act.

The Act states:

''Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.''

The Posse Comitatus Act is designed to prevent the military from becoming a national police force.

The Declaration of Independence states as a specific grievance against the British that the King had ''kept among us, in times of peace, Standing Armies without the consent of our legislatures,'' had ''affected to render the Military independent of and superior to the civil power,'' and had ''quarter[ed] large bodies of armed troops among us . . . protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States''

Despite the Posse Comitatus Act's intent, and in contravention of the law, President Bush:

(a) has used military forces for law enforcement purposes on U.S. border patrol;

(b) has established a program to use military personnel for surveillance and information on criminal activities;

(c) is using military espionage equipment to collect intelligence information for law enforcement use on civilians within the United States; and

(d) employs active duty military personnel in surveillance agencies, including the Central Intelligence Agency (CIA).

In June 2006, President Bush ordered National Guard troops deployed to the border shared by Mexico with Arizona, Texas, and California. This deployment, which by 2007 reached a maximum of 6,000 troops, had orders to ''conduct surveillance and operate detection equipment, work with border entry identification teams, analyze information,

assist with communications and give administrative support to the Border Patrol'' and concerned ''. . . providing intelligence, inspecting cargo, and conducting surveillance.''

The Air Force's ''Eagle Eyes'' program encourages Air Force military staff to gather evidence on American citizens. Eagle Eyes instructs Air Force personnel to engage in surveillance and then advises them to ''alert local authorities,'' asking military staff to surveil and gather evidence on public citizens. This contravenes DoD Directive 5525.5 ''SUBJECT: DoD Cooperation with Civilian Law Enforcement'' which limits such activities.

President Bush has implemented a program to use imagery from military satellites for domestic law enforcement through the National Applications Office.

President Bush has assigned numerous active duty military personnel to civilian institutions such as the CIA and the Department of Homeland Security, both of which have responsibilities for law enforcement and intelligence.

In addition, on May 9, 2007, President Bush released ''National Security Presidential Directive/NSPD 51,'' which effectively gives the president unchecked power to control the entire government and to define that government in time of an emergency, as well as the power to determine whether there is an emergency. The document also contains ''classified Continuity Annexes.'' In July 2007 and again in August 2007 Rep. Peter DeFazio, a senior member of the House Homeland Security Committee, sought access to the classified annexes. DeFazio and other leaders of the Homeland Security Committee, including Chairman Bennie Thompson, have been denied a review of the Continuity of Government classified annexes.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXIV.—SPYING ON AMERICAN CITIZENS, WITHOUT A COURT-ORDERED WARRANT, IN VIOLATION OF THE LAW AND THE FOURTH AMENDMENT

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, knowingly violated the fourth Amendment to the Constitution and the Foreign Intelligence Service Act of 1978 (FISA) by authorizing warrantless electronic surveillance of American citizens to wit:

(1) The President was aware of the FISA Law requiring a court order for any wiretap as evidenced by the following:

(A) ''Now, by the way, any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so.'' White House Press conference on April 20, 2004. [White House Transcript]

(B) ''Law enforcement officers need a federal judge's permission to wiretap a foreign terrorist's phone, or to track his calls, or to search his property. Officers must meet strict standards to use any of the tools we're talking about.'' President Bush's speech in Baltimore Maryland on July 20th 2005. [White House Transcript]

(2) The President repeatedly ordered the NSA to place wiretaps on American citizens without requesting a warrant from FISA as evidenced by the following:

(A) ''Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.'' New York Times article by James Risen and Eric Lichtblau on December 12, 2005. [NYTimes]

(B) The President admits to authorizing the program by stating ''I have reauthorized this program more than 30 times since the September the 11th attacks, and I intend to do so for as long as our nation faces a continuing threat from al Qaeda and related groups. The NSA's activities under this authorization are thoroughly reviewed by the Justice Department and NSA's top legal officials, including NSA's general counsel and inspector general. Leaders in Congress have been briefed more than a dozen times on this authorization and the activities conducted under it.'' Radio Address from the White House on December 17, 2005. [White House Transcript]

(C) In a December 19th 2005 press conference the President publicly admitted to using a combination of surveillance techniques including some with permission from the FISA courts and some without permission from FISA.

Reporter: It was, why did you skip the basic safeguards of asking courts for permission for the intercepts?

The President: . . . We use FISA still—you're referring to the FISA court in your question—of course, we use FISAs. But FISA is for long-term monitoring. What is needed in order to protect the American people is the ability to move quickly to detect. Now, having suggested this idea, I then, obviously, went to the question, is it legal to do so? I am—I swore to uphold the laws. Do I have the legal authority to do this? And the answer is, absolutely. As I mentioned in my remarks, the legal authority is derived from the Constitution, as well as the authorization of force by the United States Congress.'' [White House Transcript]

(D) Mike McConnel, the Director of National Intelligence, in a letter to to Senator Arlen Specter, acknowledged that Bush's Executive Order in 2001 authorized a series of secret surveillance activities and included undisclosed activities beyond the warrantless surveillance of e-mails and phone calls that Bush confirmed in December 2005. ''NSA Spying Part of Broader Effort'' by Dan Eggen, Washington Post, 8/1/07.

(3) The President ordered the surveillance to be conducted in a way that would spy upon private communications between American citizens located within the United States borders as evidenced by the following:

(A) Mark Klein, a retired AT&T communications technician, submitted an affidavit in support of the Electronic Frontier Foundation's FF's lawsuit against AT&T. He testified that in 2003 he connected a ''splitter'' that sent a copy of Internet traffic and phone calls to a secure room that was operated by the NSA in the San Francisco office of AT&T. He heard from a co-worker that similar rooms were being constructed in other cities, including Seattle, San Jose, Los Angeles and San Diego. From ''Whistle-Blower Outs NSA Spy Room,'' Wired News, 4/7/06 [Wired] [EFF Case]

(4) The President asserted an inherent authority to conduct electronic surveillance based on the Constitution and the ''Authorization to use Military Force in Iraq'' (AUMF) that was not legally valid as evidenced by the following:

(A) In a December 19th, 2005 Press Briefing General Alberto Gonzales admitted that the surveillance authorized by the President was not only done without FISA warrants, but that the nature of the surveillance was so far removed from what FISA can approve that FISA could not even be amended to allow it. Gonzales stated ''We have had discussions with Congress in the past—certain members of Congress—as to whether or not FISA could be amended to allow us to adequately deal with this kind of threat, and we were advised that that would be difficult, if not impossible.''.

(B) The fourth amendment to the United States Constitution states ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

(C) ''The Foreign Intelligence Surveillance Act of 1978 unambiguously limits warrantless domestic electronic surveillance, even in a congressionally declared war, to the first 15 days of that war; criminalizes any such electronic surveillance not authorized by statute; and expressly establishes FISA and two chapters of the federal criminal code, governing wiretaps for intelligence purposes and for criminal investigation, respectively, as the ''exclusive means by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted.'' 50 U.S.C. 1811, 1809, 18 U.S.C. 2511(2)(f).'' Letter from Harvard Law Professor Lawrence Tribe to John Conyers on 1/6/06.

(D) In a December 19th, 2005 Press Briefing Attorney General Alberto Gonzales stated ''Our position is, is that the authorization to use force, which was passed by the Congress in the days following September 11th, constitutes that other authorization, that other statute by Congress, to engage in this kind of signals intelligence.''

(E) The ''Authorization to use Military Force in Iraq'' does not give any explicit authorization related to electronic surveillance. [HJRes114]

(F) ''From the foregoing analysis, it appears unlikely that a court would hold that Congress has expressly or impliedly authorized the NSA electronic surveillance operations here under discussion, and it would likewise appear that, to the extent that those surveillances fall within the definition of ''electronic surveillance'' within the meaning of FISA or any activity regulated under Title III, Congress intended to cover the entire field with these statutes.'' From the ''Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information'' by the Congressional Research Service on January 5, 2006.

(G) ''The inescapable conclusion is that the AUMF did not implicitly authorize what the FISA expressly prohibited. It follows that the presidential program of surveillance at issue here is a violation of the separation of powers—as grave an abuse of executive authority as I can recall ever having studied.'' Letter from Harvard Law Professor Lawrence Tribe to John Conyers on 1/6/06.

(H) On August 17, 2006 Judge Anna Diggs Taylor of the United States District Court in Detroit, in ACLU v. NSA, ruled that the ''NSA program to wiretap the international communications of some Americans without a court warrant violated the Constitution. . . . Judge Taylor ruled that the program

violated both the Fourth Amendment and a 1978 law that requires warrants from a secret court for intelligence wiretaps involving people in the United States. She rejected the administration's repeated assertions that a 2001 Congressional authorization and the president's constitutional authority allowed the program.'' From a New York Times article ''Judge Finds Wiretap Actions Violate the Law'' 8/18/06 and the Memorandum Opinion.

(I) In July 2007, the Sixth Circuit Court of Appeals dismissed the case, ruling the plaintiffs had no standing to sue because, given the secretive nature of the surveillance, they could not state with certainty that they have been wiretapped by the NSA. This ruling did not address the legality of the surveillance so Judge Taylor's decision is the only ruling on that issue. [ACLU Legal Documents]

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXV.—DIRECTING TELECOMMUNICATIONS COMPANIES TO CREATE AN ILLEGAL AND UNCONSTITUTIONAL DATABASE OF THE PRIVATE TELEPHONE NUMBERS AND EMAILS OF AMERICAN CITIZENS

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, violated the Stored Communications Act of 1986 and the Telecommunications Act of 1996 by creating of a very large database containing information related to the private telephone calls and emails of American citizens, to wit:

The President requested that telecommunication companies release customer phone records to the government illegally as evidenced by the following:

''The Stored Communications Act of 1986 (SCA) prohibits the knowing disclosure of customer telephone records to the government unless pursuant to subpoena, warrant or a National Security Letter (or other Administrative subpoena); with the customers lawful consent; or there is a business necessity; or an emergency involving the danger of death or serious physical injury. None of these exceptions apply to the circumstance described in the USA Today story.'' From page 169, ''George W Bush versus the U.S. Constitution.'' Compiled at the direction of Representative John Conyers.

According to a May 11, 2006 article in USA Today by Lesley Cauley ''The National Security Agency has been secretly collecting the phone call records of tens of millions of Americans, using data provided by AT&T, Verizon and BellSouth.'' An unidentified source said 'The agency's goal is to create a database of every call ever made within the nation's borders.''

In early 2001, Qwest CEO Joseph Nacchio rejected a request from the NSA to turn over customers records of phone calls, emails and other Internet activity. Nacchio believed that complying with the request would violate the Telecommunications Act of 1996. From National Journal, November 2, 2007.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXVI.—ANNOUNCING THE INTENT TO VIOLATE LAWS WITH SIGNING STATEMENTS, AND VIOLATING THOSE LAWS

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has used signing statements to claim the right to violate acts of Congress even as he signs them into law.

In June 2007, the Government Accountability Office reported that in a sample of Bush signing statements the office had studied, for 30 percent of them the Bush administration had already proceeded to violate the laws the statements claimed the right to violate.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXVII.—FAILING TO COMPLY WITH CONGRESSIONAL SUBPOENAS AND INSTRUCTING FORMER EMPLOYEES NOT TO COMPLY

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, refused to comply with Congressional subpoenas, and instructed former employees not to comply with subpoenas.

Subpoenas not complied with include:

A House Judiciary Committee subpoena for Justice Department papers and Emails, issued April 10, 2007;

A House Oversight and Government Reform Committee subpoena for the testimony of the Secretary of State, issued April 25, 2007;

A House Judiciary Committee subpoena for the testimony of former White House Counsel Harriet Miers and documents, issued June 13, 2007;

A Senate Judiciary Committee subpoena for documents and testimony of White House Chief of Staff Joshua Bolten, issued June 13, 2007;

A Senate Judiciary Committee subpoena for documents and testimony of White House Political Director Sara Taylor, issued June 13, 2007 (Taylor appeared but refused to answer questions);

A Senate Judiciary Committee subpoena for documents and testimony of White House Deputy Chief of Staff Karl Rove, issued June 26, 2007;

A Senate Judiciary Committee subpoena for documents and testimony of White House Deputy Political Director J. Scott Jennings, issued June 26, 2007 (Jennings appeared but refused to answer questions);

A Senate Judiciary Committee subpoena for legal analysis and other documents concerning the NSA warrantless wiretapping program from the White House, Vice President Richard Cheney, The Department of Justice, and the National Security Council. If the documents are not produced, the subpoena requires the testimony of White House chief of staff Josh Bolten, Attorney General Alberto Gonzales, Cheney chief of staff David Addington, National Security Council executive director V. Philip Lago, issued June 27, 2007;

A House Oversight and Government Reform Committee subpoena for Lt. General Kensinger.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXVIII.—TAMPERING WITH FREE AND FAIR ELECTIONS, CORRUPTION OF THE ADMINISTRATION OF JUSTICE

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, conspired to undermine and tamper with the conduct of free and fair elections, and to corrupt the administration of justice by United States Attorneys and other employees of the Department of Justice, through abuse of the appointment power.

Toward this end, the President and Vice President, both personally and through their agents, did:

Engage in a program of manufacturing false allegations of voting fraud in targeted jurisdictions where the Democratic Party enjoyed an advantage in electoral performance or otherwise was problematic for the President's Republican Party, in order that public confidence in election results favorable to the Democratic Party be undermined;

Direct United States Attorneys to launch and announce investigations of certain leaders, candidates and elected officials affiliated with the Democratic Party at times calculated to cause the most political damage and confusion, most often in the weeks immediately preceding an election, in order that public confidence in the suitability for office of Democratic Party leaders, candidates and elected officials be undermined;

Direct United States Attorneys to terminate or scale back existing investigations of certain Republican Party leaders, candidates and elected officials allied with the George W. Bush administration, and to refuse to pursue new or proposed investigations of certain Republican Party leaders, candidates and elected officials allied with the George W. Bush administration, in order that public confidence in the suitability of such Republican Party leaders, candidates and elected officials be bolstered or restored;

Threaten to terminate the employment of the following United States Attorneys who refused to comply with such directives and purposes;

David C. Iglesias as U.S. Attorney for the District of New Mexico;

Kevin V. Ryan as U.S. Attorney for the Northern District of California;

John L. McKay as U.S. Attorney for the Western District of Washington;

Paul K. Charlton as U.S. Attorney for the District of Arizona;

Carol C. Lam as U.S. Attorney for the Southern District of California;

Daniel G. Bogden as U.S. Attorney for the District of Nevada;

Margaret M. Chiara as U.S. Attorney for the Western District of Michigan;

Todd Graves as U.S. Attorney for the Western District of Missouri;

Harry E. ''Bud'' Cummins, III as U.S. Attorney for the Eastern District of Arkansas;

Thomas M. DiBiagio as U.S. Attorney for the District of Maryland, and;

Kasey Warner as U.S. Attorney for the Southern District of West Virginia.

Further, George W. Bush has both personally and acting through his agents and subordinates, together with the Vice President conspired to obstruct the lawful Congressional investigation of these dismissals of United States Attorneys and the related scheme to undermine and tamper with the conduct of free and fair elections, and to corrupt the administration of justice.

Contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, George W. Bush has without lawful cause or excuse directed not to appear before the Committee on the Judiciary of the House of Representatives certain witnesses summoned by duly authorized subpoenas issued by that Committee on June 13, 2007.

In refusing to permit the testimony of these witnesses George W. Bush, substituting his judgment as to what testimony was necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the checking and balancing power of oversight vested in the House of Representatives.

Further, the President has both personally and acting through his agents and subordinates, together with the Vice President directed the United States Attorney for the District of Columbia to decline to prosecute for contempt of Congress the aforementioned witnesses, Joshua B. Bolten and Harriet E. Miers, despite the obligation to do so as established by statute (2 U.S.C. §194) and pursuant to the direction of the United States House of Representatives as embodied in its resolution (H. Res. 982) of February 14, 2008.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXIX.—CONSPIRACY TO VIOLATE THE VOTING RIGHTS ACT OF 1965

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed,'' has both personally and acting through his agents and subordinates, has willfully corrupted and manipulated the electoral process of the United States for his personal gain and the personal gain of his co-conspirators and allies; has violated the United States Constitution and law by failing to protect the civil rights of African-American voters and others in the 2004 Election, and has impeded the right of the people to vote and have their vote properly and accurately counted, in that:

A. On November 5, 2002, and prior thereto, James Tobin, while serving as the regional director of the National Republican Senatorial Campaign Committee and as the New England Chairman of Bush-Cheney '04 Inc., did, at the direction of the White House under the administration of George W. Bush, along with other agents both known and unknown, commit unlawful acts by aiding and abetting a scheme to use computerized hang-up calls to jam phone lines set up by the New Hampshire Democratic Party and the Manchester firefighters' union on Election Day;

B. An investigation by the Democratic staff of the House Judiciary Committee into the voting procedures in Ohio during the 2004 election found ''widespread instances of intimidation and misinformation in violation of the Voting Rights Act, the Civil Rights Act of 1968, Equal Protection, Due Process and the Ohio right to vote;''

C. The 14th Amendment Equal Protection Clause guarantees that no minority group will suffer disparate treatment in a federal, state, or local election in stating that: ''No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'' However, during and at various times of the year 2004, John Kenneth Blackwell, then serving as the Secretary of State for the State of Ohio and also serving simultaneously as Co-Chairman of the Committee to Re-Elect George W. Bush in the State of Ohio, did, at the direction of the White House under the administration of George W. Bush, along with other agents both known and unknown, commit unlawful acts in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution by failing to protect the voting rights of African-American citizens in Ohio and further, John Kenneth Blackwell did disenfranchise African-American voters under color of law, by

(i) Willfully denying certain neighborhoods in the cities of Cleveland, Ohio and Columbus, Ohio, along with other urban areas in the State of Ohio, an adequate number of electronic voting machines and provisional paper ballots, thereby unlawfully impeding duly registered voters from the act of voting and thus violating the civil rights of an unknown number of United States citizens.

a. In Franklin County, George W. Bush and his agent, Ohio Secretary of State John Kenneth Blackwell, Co-Chair of the Bush-Cheney Re-election Campaign, failed to protect the rights of African-American voters by not properly investigating the withholding of 125 electronic voting machines assigned to the city of Columbus.

b. Forty-two African-American precincts in Columbus were each missing one voting machine that had been present in the 2004 primary.

c. African-American voters in the city of Columbus were forced to wait three to seven hours to vote in the 2004 presidential election.

(ii) Willfully issuing unclear and conflicting rules regarding the methods and manner of becoming a legally registered voter in the State of Ohio, and willfully issuing unclear and unnecessary edicts regarding the weight of paper registration forms legally acceptable to the State of Ohio, thereby creating confusion for both voters and voting officials and thus impeding the right of an unknown number of United States citizens to register and vote.

a. Ohio Secretary of State John Kenneth Blackwell directed through Advisory 2004–31 that voter registration forms, which were greatest in urban minority areas, should not be accepted and should be returned unless submitted on 80 bond paper weight. Blackwell's own office was found to be using 60 bond paper weight.

(iii) Willfully permitted and encouraged election officials in Cleveland, Cincinnati and Toledo to conduct a massive partisan purge of registered voter rolls, eventually expunging more than 300,000 voters, many of whom were duly registered voters, and who were thus deprived of their constitutional right to vote;

a. Between the 2000 and 2004 Ohio presidential elections, 24.93% of the voters in the city of Cleveland, a city with a majority of African American citizens, were purged from the voting rolls.

b. In that same period, the Ohio county of Miami, with census data indicating a 98% Caucasian population, refused to purge any voters from its rolls. Miami County ''merged'' voters from other surrounding counties into its voting rolls and even allowed voters from other states to vote.

c. In Toledo, Ohio, an urban city with a high African-American concentration, 28,000 voters were purged from the voting rolls in August of 2004, just prior to the presidential election. This purge was conducted under the control and direction of George W. Bush's agent, Ohio Secretary of State John Kenneth Blackwell outside of the regularly established cycle of purging voters in odd-numbered years.

(iv) Willfully allowing Ohio Secretary of State John Kenneth Blackwell, acting under color of law and as an agent of George W. Bush, to issue a directive that no votes would be counted unless cast in the right precinct, reversing Ohio's long-standing practice of counting votes for president if cast in the right county.

(v) Willfully allowing his agent, Ohio Secretary of State John Kenneth Blackwell, the Co-Chair of the Bush-Cheney Re- election Campaign, to do nothing to assure the voting rights of 10,000 people in the city of Cleveland when a computer error by the private vendor Diebold Election Systems, Inc. incorrectly disenfranchised 10,000 voters

(vi) Willfully allowing his agent, Ohio Secretary of State John Kenneth Blackwell, the Co-Chair of the Bush- Cheney Re-election Campaign, to ensure that uncounted and provisional ballots in Ohio's 2004 presidential election would be disproportionately concentrated in urban African-American districts.

a. In Ohio's Lucas County, which includes Toledo, 3,122 or 41.13% of the provisional ballots went uncounted under the direction of George W. Bush's agent, the Secretary of State of Ohio, John Kenneth Blackwell, Co-Chair of the Committee to Re-Elect Bush/Cheney in Ohio.

b. In Ohio's Cuyahoga County, which includes Cleveland, 8,559 or 32.82% of the provisional ballots went uncounted.

c. In Ohio's Hamilton County, which includes Cincinnati, 3,529 or 24.23% of the provisional ballots went uncounted.

d. Statewide, the provisional ballot rejection rate was 9% as compared to the greater figures in the urban areas.

D. The Department of Justice, charged with enforcing the Voting Rights Act of 1965, the 14th Amendment's Equal Protection Clause, and other voting rights laws in the United States of America, under the direction and Administration of George W. Bush did willfully and purposely obstruct and stonewall legitimate criminal investigations

into myriad cases of reported electoral fraud and suppression in the state of Ohio. Such activities, carried out by the department on behalf of George W. Bush in counties such as Franklin and Knox by persons such as John K. Tanner and others, were meant to confound and whitewash legitimate legal criminal investigations into the suppression of massive numbers of legally registered voters and the removal of their right to cast a ballot fairly and freely in the state of Ohio, which was crucial to the certified electoral victory of George W. Bush in 2004.

E. On or about November 1, 2006, members of the United States Department of Justice, under the control and direction of the Administration of George W. Bush, brought indictments for voter registration fraud within days of an election, in order to directly effect the outcome of that election for partisan purposes, and in doing so, thereby violated the Justice Department's own rules against filing election-related indictments close to an election;

F. Emails have been obtained showing that the Republican National Committee and members of Bush-Cheney '04 Inc., did, at the direction of the White House under the administration of George W. Bush, engage in voter suppression in five states by a method know as ''vote caging,'' an illegal voter suppression technique;

G. Agents of George W. Bush, including Mark F. ''Thor'' Hearne, the national general counsel of Bush/Cheney '04, Inc., did, at the behest of George W. Bush, as members of a criminal front group, distribute known false information and propaganda in the hopes of forwarding legislation and other actions that would result in the disenfranchisement of Democratic voters for partisan purposes. The scheme, run under the auspices of an organization known as ''The American Center for Voting Rights'' (ACVR), was funded by agents of George W. Bush in violation of laws governing tax exempt 501(c)3 organizations and in violation of federal laws forbidding the distribution of such propaganda by the federal government and agents working on its behalf.

H. Members of the United States Department of Justice, under the control and direction of the Administration of George W. Bush, did, for partisan reasons, illegally and with malice aforethought block career attorneys and other officials in the Department of Justice from filing three lawsuits charging local and county governments with violating the voting rights of African-Americans and other minorities, according to seven former senior United States Justice Department employees.

I. Members of the United States Department of Justice, under the control and direction of the Administration of George W. Bush, did illegally and with malice aforethought derail at least two investigations into possible voter discrimination, according to a letter sent to the Senate Rules and Administration Committee and written by former employees of the United States Department of Justice, Voting Rights Section.

J. Members of the United States Election Assistance Commission (EAC), under the control and direction of the Administration of George W. Bush, have purposefully and willfully misled the public, in violation of several laws, by;

(i) Withholding from the public and then altering a legally mandated report on the true measure and threat of Voter Fraud, as commissioned by the EAC and completed in June 2006, prior to the 2006 mid-term election, but withheld from release prior to that election when its information would have been useful in the administration of elections across the country, because the results of the statutorily required and tax-payer funded report did not conform with the illegal, partisan propaganda efforts and politicized agenda of the Bush Administration;

(ii) Withholding from the public a legally mandated report on the disenfranchising effect of Photo Identification laws at the polling place, shown to disproportionately disenfranchise voters not of George W. Bush's political party. The report was commissioned by the EAC and completed in June 2006, prior to the 2006 mid-term election, but withheld from release prior to that election when its information would have been useful in the administration of elections across the country

(iii) Withholding from the public a legally mandated report on the effectiveness of Provisional Voting as commissioned by the EAC and completed in June 2006, prior to the 2006 mid-term election, but withheld from release prior to that election when its information would have been useful in the administration of elections across the country, and keeping that report unreleased for more than a year until it was revealed by independent media outlets.

For directly harming the rights and manner of suffrage, for suffering to make them secret and unknowable, for overseeing and participating in the disenfranchisement of legal voters, for instituting debates and doubts about the true nature of elections, all against the will and consent of local voters affected, and forced through threats of litigation by agents and agencies overseen by George W. Bush, the actions of Mr. Bush to do the opposite of securing and guaranteeing the right of the people to alter or abolish their government via the electoral process, being a violation of an inalienable right, and an immediate threat to Liberty.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXX.—MISLEADING CONGRESS AND THE AMERICAN PEOPLE IN AN ATTEMPT TO DESTROY MEDICARE

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, pursued policies which deliberately drained the fiscal resources of Medicare by forcing it to compete with subsidized private insurance plans which are allowed to arbitrarily select or not select those they will cover; failing to provide reasonable levels of reimbursements to Medicare providers, thereby discouraging providers from participating in the program, and designing a Medicare Part D benefit without cost controls which allowed pharmaceutical companies to gouge the American taxpayers for the price of prescription drugs.

The President created, manipulated, and disseminated information given to the citizens and Congress of the United States in support of his prescription drug plan for Medicare that enriched drug companies while failing to save beneficiaries sufficient money on their prescription drugs. He misled Congress and the American people into thinking the cost of the benefit was $400 billion. It was widely understood that if the cost exceeded that amount, the bill would not pass due to concerns about fiscal irresponsibility.

A Medicare Actuary who possessed information regarding the true cost of the plan, $539 billion, was instructed by the Medicare Administrator to deny Congressional requests for it. The Actuary was threatened with sanctions if the information was disclosed to Congress, which, unaware of the information, approved the bill. Despite the fact that official cost estimates far exceeded $400 billion, President Bush offered assurances to Congress that the cost was $400 billion, when his office had information to the contrary. In the House of Representatives, the bill passed by a single vote and the Conference Report passed by only 5 votes. The White House knew the actual cost of the drug benefit was high enough to prevent its passage. Yet the White House concealed the truth and impeded an investigation into its culpability.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXXI.—KATRINA: FAILURE TO PLAN FOR THE PREDICTED DISASTER OF HURRICANE KATRINA, FAILURE TO RESPOND TO A CIVIL EMERGENCY

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, failed to take sufficient action to protect life and property prior to and in the face of Hurricane Katrina in 2005, given decades of foreknowledge of the dangers of storms to New Orleans and specific forewarning in the days prior to the storm. The President failed to prepare for predictable and predicted disasters, failed to respond to an immediate need of which he was informed, and has subsequently failed to rebuild the section of our nation that was destroyed.

Hurricane Katrina killed at least 1,282 people, with 2 million more displaced. 302,000 housing units were destroyed or damaged by the hurricane, 71% of these were low-income units. More than 500 sewage plants were destroyed, more than 170 point-source leakages of gasoline, oil, or natural gas, more than 2000 gas stations submerged, several chemical plants, 8 oil refineries, and a superfund site was submerged. 8 million gallons of oil were spilled. Toxic materials seeped into floodwaters and spread through much of the city and surrounding areas.

The predictable increased strength of hurricanes such as Katrina has been identified by scientists for years, and yet the Bush Administration has denied this science and restricted such information from official reports, publications, and the National Oceanic and Atmospheric Agency's website. Donald Kennedy, editor-in-chief of Science, wrote in 2006 that ''hurricane intensity has increased with oceanic surface temperatures over the past 30 years. The physics of hurricane intensity growth . . . has clarified and explained the thermodynamic basis for these observations. [Kerry] Emanuel has tested this relationship and presented convincing evidence.''

FEMA's 2001 list of the top three most likely and most devastating disasters were a San Francisco earthquake, a terrorist attack on New York, and a Category 4 hurricane hitting New Orleans, with New Orleans being the number one item on that list. FEMA conducted a five-day hurricane simulation exercise in 2004, ''Hurricane Pam,'' mimicking a Katrina-like event. This exercise combined the National Weather Service, the U.S. Army Corps of Engineers, the LSU Hurricane Center and other state and federal agencies, resulting in the development of emergency response plans. The exercise demonstrated, among other things, that thousands of mainly indigent New Orleans residents would be unable to evacuate on their own. They would need substantial government assistance. These plans, however, were not implemented in part due to the President's slashing of funds for protection. In the year before Hurricane Katrina hit, the President continued to cut budgets and deny grants to the Gulf Coast. In June of 2004 the Army Corps of Engineers levee budget for New Orleans was cut, and it was cut again in June of 2005, this time by $71.2 million or a whopping 44% of the budget. As a result, ACE was forced to suspend any repair work on the levees. In 2004 FEMA denied a Louisiana disaster mitigation grant request.

The President was given multiple warnings that Hurricane Katrina had a high likelihood of causing serious damage to New Orleans and the Gulf Coast. At 10 AM on Sunday 28 August 2005, the day before the storm hit, the National Weather Service published an alert titled ''DEVASTATING DAMAGE EXPECTED.'' Printed in all capital letters, the alert stated that ''MOST OF THE AREA WILL BE UNINHABITABLE FOR WEEKS . . . PERHAPS LONGER. AT LEAST ONE HALF OF WELL CONSTRUCTED HOMES WILL HAVE ROOF AND WALL FAILURE. . . . POWER OUTAGES WILL LAST FOR WEEKS. . . . WATER SHORTAGES WILL MAKE HUMAN SUFFERING INCREDIBLE BY MODERN STANDARDS.''

The Homeland Security Department also briefed the President on the scenario, warning of levee breaches and severe flooding. According to the New York Times, ''a Homeland Security Department report submitted to the White House at 1:47 a.m. on Aug. 29, hours before the storm hit, said, 'Any storm rated Category 4 or greater will likely lead to severe flooding and/or levee breaching.' '' These warnings clearly contradict the statements made by President Bush immediately after the storm that such devastation could not have been predicted. On 1 September 2005 the President said ''I don't think anyone anticipated the breach of the levees.''

The President's response to Katrina via FEMA and DHS was criminally delayed, indifferent, and inept. The only FEMA employee posted in New Orleans in the immediate aftermath of Hurricane Katrina, Marty Bahamonde, emailed head of FEMA Michael Brown from his Blackberry device on August 31, 2005 regarding the conditions. The email was urgent and detailed and indicated that ''The situation is past critical . . . Estimates are many will die within hours.'' Brown's reply was emblematic of the administration's entire response to the catastrophe: ''Thanks for the update. Anything specific I need to do or tweak?'' The Secretary of Homeland Security, Michael Chertoff, did not declare an emergency, did not mobilize the federal resources, and seemed to not even know what was happening on the ground until reporters told him.

On Friday August 26, 2005, Governor Kathleen Blanco declared a State of Emergency in Louisiana and Governor Haley Barbour of Mississippi followed suit the next day. Also on that Saturday, Governor Blanco asked the President to declare a Federal State of Emergency, and on 28 August 2005, the Sunday before the storm hit, Mayor Nagin declared a State of Emergency in New Orleans. This shows that the local authorities, responding to federal warnings, knew how bad the destruction was going to be and anticipated being overwhelmed. Failure to act under these circumstances demonstrates gross negligence.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXXII.—MISLEADING CONGRESS AND THE AMERICAN PEOPLE, SYSTEMATICALLY UNDERMINING EFFORTS TO ADDRESS GLOBAL CLIMATE CHANGE

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, ignored the peril to life and property posed by global climate change, manipulated scientific information and mishandled protective policy, constituting nonfeasance and malfeasance in office, abuse of power, dereliction of duty, and deception of Congress and the American people.

President Bush knew the expected effects of climate change and the role of human activities in driving climate change. This knowledge preceded his first Presidential term.

1. During his 2000 Presidential campaign, he promised to regulate carbon dioxide emissions.

2. In 2001, the Intergovernmental Panel on Climate Change, a global body of hundreds of the world's foremost experts on climate change, concluded that ''most of observed warming over last 50 years (is) likely due to increases in greenhouse gas concentrations due to human activities.'' The Third Assessment Report projected several effects of climate change such as continued ''widespread retreat'' of glaciers, an ''increase threats to human health, particularly in lower income populations, predominantly within tropical/subtropical countries,'' and ''water shortages.''

3. The grave danger to national security posed by global climate change was recognized by the Pentagon's Defense Advanced Planning Research Projects Agency in October of 2003. An agency-commissioned report ''explores how such an abrupt climate change scenario could potentially de-stabilize the geo-political environment, leading to skirmishes, battles, and even war due to resource constraints such as: 1) Food shortages due to decreases in net global agricultural production 2) Decreased availability and quality of fresh water in key regions due to shifted precipitation patters, causing more frequent floods and droughts 3) Disrupted access to energy supplies due to extensive sea ice and storminess.''

4. A December 2004 paper in Science reviewed 928 studies published in peer reviewed journals to determine the number providing evidence against the existence of a link between anthropogenic emissions of carbon dioxide and climate change. ''Remarkably, none of the papers disagreed with the consensus position.''

5. The November 2007 Inter-Governmental Panel on Climate Change (IPCC) Fourth Assessment Report showed that global anthropogenic emissions of greenhouse gasses have increased 70% between 1970 and 2004, and anthropogenic emissions are very likely the cause of global climate change. The report concluded that global climate change could cause the extinction of 20 to 30 percent of species in unique ecosystems such as the polar areas and biodiversity hotspots, increase extreme weather events especially in the developing world, and have adverse effects on food production and fresh water availability.

The President has done little to address this most serious of problems, thus constituting an abuse of power and criminal neglect. He has also actively endeavored to undermine efforts by the federal government, states, and other nations to take action on their own.

1. In March 2001, President Bush announced the U.S. would not be pursuing ratification of the Kyoto Protocol, an international effort to reduce greenhouse gasses. The United States is the only industrialized nation that has failed to ratify the accord.

2. In March of 2008, Representative Henry Waxman wrote to EPA Administrator Stephen Johnson: ''In August 2003, the Bush Administration denied a petition to regulate CO_2 emissions from motor vehicles by deciding that CO_2 was not a pollutant under the Clean Air Act. In April 2007, the U.S. Supreme Court overruled that determination in Massachusetts v. EPA. The Supreme Court wrote that 'If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles.' The EPA then conducted an extensive investigation involving 60–70 staff who concluded that 'CO_2 emissions endanger both human health and welfare.' These findings were submitted to the White House, after which work on the findings and the required regulations was halted.''

3. A Memo to Members of the Committee on Oversight and Government Reform on May 19, 2008 stated ''The record before the Committee shows: (1) the career staff at EPA unanimously supported granting California's petition (to be allowed to regulate greenhouse gas emissions from cars and trucks, consistent with California state law); (2) Stephen Johnson, the Administrator of EPA, also supported granting California's petition at least in part; and (3) Administrator Johnson reversed his position after communications with officials in the White House.''

The President has suppressed the release of scientific information related to global climate change, an action which undermines Congress' ability to legislate and provide oversight, and which has thwarted efforts to prevent global climate change despite the serious threat that it poses.

1. In February, 2001, ExxonMobil wrote a memo to the White House outlining ways to influence the outcome of the Third Assessment report by the Intergovernmental Panel on Climate Change. The memo opposed the reelection of Dr. Robert Watson as the IPCC Chair. The White House then supported an opposition candidate, who was subsequently elected to replace Dr. Watson.

2. The New York Times on January 29, 2006, reported that James Hansen, NASA's senior climate scientist was warned of ''dire consequences'' if he continued to speak out about global climate change and the need for reducing emissions of associated gasses. The Times also reported that: ''At climate laboratories of the National Oceanic and Atmospheric Administration, for example, many scientists who routinely took calls from reporters five years ago can now do so only if the interview is approved by adminis-

tration officials in Washington, and then only if a public affairs officer is present or on the phone.''

3. In December of 2007, the House Committee on Oversight and Government Reform issued a report based on 16 months of investigation and 27,000 pages of documentation. According to the summary: ''The evidence before the Committee leads to one inescapable conclusion: the Bush Administration has engaged in a systematic effort to manipulate climate change science and mislead policy makers and the public about the dangers of global warming.'' The report described how the White House appointed former petroleum industry lobbyist Phil Cooney as head of the Council on Environmental Quality. The report states ''There was a systematic White House effort to minimize the significance of climate change by editing climate change reports. CEQ Chief of Staff Phil Cooney and other CEQ officials made at least 294 edits to the Administration's Strategic Plan of the Climate Change Science Program to exaggerate or emphasize scientific uncertainties or to de-emphasize or diminish the importance of the human role in global warming.''

4. On April 23, 2008, Representative Henry Waxman wrote a letter to EPA Administrator Stephen L Johnson. In it he reported: ''Almost 1,600 EPA scientists completed the Union of Concerned Scientists survey questionnaire. Over 22 percent of these scientists reported that 'selective or incomplete use of data to justify a specific regulatory outcome' occurred 'frequently' or 'occasionally' at EPA. Ninety-four EPA scientists reported being frequently or occasionally directed to inappropriately exclude or alter technical information from an EPA scientific document. Nearly 200 EPA scientists said that they have frequently or occasionally been in situations in which scientists have actively objected to, resigned from or removed themselves from a project because of pressure to change scientific findings.''

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXXIII.—REPEATEDLY IGNORED AND FAILED TO RESPOND TO HIGH LEVEL INTELLIGENCE WARNINGS OF PLANNED TERRORIST ATTACKS IN THE US, PRIOR TO 9/11

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, failed in his Constitutional duties to take proper steps to protect the nation prior to September 11, 2001.

The White House's top counter-terrorism adviser, Richard A. Clarke, has testified that from the beginning of George W. Bush's presidency until September 11, 2001, Clarke attempted unsuccessfully to persuade President Bush to take steps to protect the nation against terrorism. Clarke sent a memorandum to then-National Security Advisor Condoleezza Rice on January 24, 2001, ''urgently'' but unsuccessfully requesting ''a Cabinet-level meeting to deal with the impending al Qaeda attack.''

In April 2001, Clarke was finally granted a meeting, but only with second-in-command department representatives, including Deputy Secretary of Defense Paul Wolfowitz, who made light of Clarke's concerns.

Clarke confirms that in June, July, and August 2001, the Central Intelligence Agency (CIA) warned the president in daily briefings of unprecedented indications that a major al Qaeda attack was going to happen against the United States somewhere in the world in the weeks and months ahead. Yet, Clarke was still unable to convene a cabinet-level meeting to address the issue.

Condoleezza Rice has testified that George Tenet met with the president 40 times to warn him that a major al-Qaeda attack was going to take place, and that in response the president did not convene any meetings of top officials. At such meetings, the FBI could have shared information on possible terrorists enrolled at flight schools. Among the many preventive steps that could have been taken, the Federal Aviation Administration, airlines, and airports might have been put on full alert.

According to Condoleezza Rice, the first and only cabinet-level meeting prior to 9/11 to discuss the threat of terrorist attacks took place on September 4, 2001, one week before the attacks in New York and Washington.

On August 6, 2001, President Bush was presented a President's Daily Brief (PDB) article titled ''Bin Laden Determined to Strike in U.S.'' The lead sentence of that PDB article indicated that Bin Laden and his followers wanted to ''follow the example of World Trade Center bomber Ramzi Yousef and 'bring the fighting to America.' '' The article warned: ''Al-Qa'ida members—including some who are U.S. citizens—have resided in or traveled to the US for years, and the group apparently maintains a support structure that could aid attacks.''

The article cited a ''more sensational threat reporting that Bin Laden wanted to hijack a US aircraft,'' but indicated that the CIA had not been able to corroborate such reporting. The PDB item included information from the FBI indicating ''patterns of suspicious activity in this country consistent with preparations for hijackings or other types of attacks, including recent surveillance of federal buildings in New York.'' The article also noted that the CIA and FBI were investigating ''a call to our embassy in the UAE in May saying that a group of Bin Laden supporters was in the US planning attacks with explosives.''

The president spent the rest of August 6, and almost all the rest of August 2001 on vacation. There is no evidence that he called any meetings of his advisers to discuss this alarming report. When the title and substance of this PDB article were later reported in the press, then-National Security Adviser Condoleezza Rice began a sustained campaign to play down its significance, until the actual text was eventually released by the White House.

New York Times writer Douglas Jehl, put it this way: ''In a single 17-sentence document, the intelligence briefing delivered to President Bush in August 2001 spells out the who, hints at the what and points towards the where of the terrorist attacks on New York and Washington that followed 36 days later.''

Eleanor Hill, Executive Director of the joint congressional committee investigating the performance of the U.S. intelligence community before September 11, 2001, reported in mid-September 2002 that intelligence reports a year earlier ''reiterated a consistent and constant theme: Osama bin Laden's intent to launch terrorist attacks inside the United States.''

That joint inquiry revealed that just two months before September 11, an intelligence briefing for ''senior government officials'' predicted a terrorist attack with these words: ''The attack will be spectacular and designed to inflict mass casualties against U.S. facilities or interests. Attack preparations have been made. Attack will occur with little or no warning.''

Given the White House's insistence on secrecy with regard to what intelligence was given to President Bush, the joint-inquiry report does not divulge whether he took part in that briefing. Even if he did not, it strains credulity to suppose that those ''senior government officials'' would have kept its alarming substance from the president.

Again, there is no evidence that the president held any meetings or took any action to deal with the threats of such attacks.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXXIV.—OBSTRUCTION OF INVESTIGATION INTO THE ATTACKS OF SEPTEMBER 11, 2001

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, obstructed investigations into the attacks on the World Trade Center and Pentagon on September 11, 2001.

Following September 11, 2001, President Bush and Vice President Cheney took strong steps to thwart any and all proposals that the circumstances of the attack be addressed. Then-Secretary of State Colin Powell was forced to renege on his public promise on September 23 that a ''White Paper'' would be issued to explain the circumstances. Less than two weeks after that promise, Powell apologized for his ''unfortunate choice of words,'' and explained that Americans would have to rely on ''information coming out in the press and in other ways.''

On Sept. 26, 2001, President Bush drove to Central Intelligence Agency (CIA) headquarters in Langley, Virginia, stood with Director of Central Intelligence George Tenet and said: ''My report to the nation is, we've got the best intelligence we can possibly have thanks to the men and women of the C.I.A.'' George Tenet subsequently and falsely claimed not to have visited the president personally between the start of Bush's long Crawford vacation and September 11, 2001.

Testifying before the 9/11 Commission on April 14, 2004, Tenet answered a question from Commission member Timothy Roemer by referring to the president's vacation (July 29–August 30) in Crawford and insisting that he did not see the president at all in August 2001. ''You never talked with him?'' Roemer asked. ''No,'' Tenet replied, explaining that for much of August he too was ''on leave.'' An Agency spokesman called reporters that same evening to say Tenet had misspoken, and that Tenet had briefed Bush on August 17 and 31. The spokesman explained that the second briefing took place after the president had returned to Washington, and played down the first one, in Crawford, as uneventful.

In his book, At the Center of the Storm, (2007) Tenet refers to what is almost cer-

tainly his August 17 visit to Crawford as a follow-up to the ''Bin Laden Determined to Strike in the U.S.'' article in the CIA-prepared President's Daily Brief of August 6. That briefing was immortalized in a Time Magazine photo capturing Harriet Myers holding the PDB open for the president, as two CIA officers sit by. It is the same briefing to which the president reportedly reacted by telling the CIA briefer, ''All right, you've covered your ass now.'' (Ron Suskind, The One-Percent Doctrine, p. 2, 2006). In At the Center of the Storm, Tenet writes: ''A few weeks after the August 6 PDB was delivered, I followed it to Crawford to make sure that the president stayed current on events.''

A White House press release suggests Tenet was also there a week later, on August 24. According to the August 25, 2001, release, President Bush, addressing a group of visitors to Crawford on August 25, told them: ''George Tenet and I, yesterday, we piled in the new nominees for the Chairman of the Joint Chiefs, the Vice Chairman and their wives and went right up the canyon.''

In early February 2002, Vice President Dick Cheney warned then-Senate Majority Leader Tom Daschle that if Congress went ahead with an investigation, administration officials might not show up to testify. As pressure grew for an investigation, the president and vice president agreed to the establishment of a congressional joint committee to conduct a ''Joint Inquiry.'' Eleanor Hill, Executive Director of the Inquiry, opened the Joint Inquiry's final public hearing in mid-September 2002 with the following disclaimer: ''I need to report that, according to the White House and the Director of Central Intelligence, the president's knowledge of intelligence information relevant to this inquiry remains classified, even when the substance of the intelligence information has been declassified.''

The National Commission on Terrorist Attacks, also known as the 9/11 Commission, was created on November 27, 2002, following the passage of congressional legislation signed into law by President Bush. The President was asked to testify before the Commission. He refused to testify except for one hour in private with only two Commission members, with no oath administered, with no recording or note taking, and with the Vice President at his side. Commission Co-Chair Lee Hamilton has written that he believes the commission was set up to fail, was underfunded, was rushed, and did not receive proper cooperation and access to information.

A December 2007 review of classified documents by former members of the Commission found that the commission had made repeated and detailed requests to the CIA in 2003 and 2004 for documents and other information about the interrogation of operatives of Al Qaeda, and had been told falsely by a top C.I.A. official that the agency had ''produced or made available for review'' everything that had been requested.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

ARTICLE XXXV.—ENDANGERING THE HEALTH OF 9/11 FIRST RESPONDERS

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under Article II, Section 3 of the Constitution ''to take care that the laws be faithfully executed'', has both personally and acting through his agents and subordinates, together with the Vice President, recklessly endangered the health of first responders, residents, and workers at and near the former location of the World Trade Center in New York City.

The Inspector General of the Environmental Protection Agency (EPA) August 21, 2003, report numbered 2003–P–00012 and entitled ''EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement,'' includes the following findings:

''[W] hen EPA made a September 18 announcement that the air was 'safe' to breathe, it did not have sufficient data and analyses to make such a blanket statement. At that time, air monitoring data was lacking for several pollutants of concern, including particulate matter and polychlorinated biphenyls (PCBs). Furthermore, The White House Council on Environmental Quality (CEQ) influenced, through the collaboration process, the information that EPA communicated to the public through its early press releases when it convinced EPA to add reassuring statements and delete cautionary ones.

''As a result of the White House CEQ's influence, guidance for cleaning indoor spaces and information about the potential health effects from WTC debris were not included in EPA-issued press releases. In addition, based on CEQ's influence, reassuring information was added to at least one press release and cautionary information was deleted from EPA's draft version of that press release . . . The White House's role in EPA's public communications about WTC environmental conditions was described in a September 12, 2001, e-mail from the EPA Deputy Administrator's Chief of Staff to senior EPA officials:

'' 'All statements to the media should be cleared through the NSC [National Security Council] before they are released.'

''According to the EPA Chief of Staff, one particular CEQ official was designated to work with EPA to ensure that clearance was obtained through NSC. The Associate Administrator for the EPA Office of Communications, Education, and Media Relations (OCEMR) said that no press release could be issued for a 3- to 4-week period after September 11 without approval from the CEQ contact.''

Acting EPA Administrator Marianne Horinko, who sat in on EPA meetings with the White House, has said in an interview that the White House played a coordinating role. The National Security Council played the key role, filtering incoming data on ground zero air and water, Horinko said: ''I think that the thinking was, these are experts in WMD (weapons of mass destruction), so they should have the coordinating role.''

In the cleanup of the Pentagon following September 11, 2001, Occupational Safety and Health Administration laws were enforced, and no workers became ill. At the World Trade Center site, the same laws were not enforced.

In the years since the release of the EPA Inspector General's above-cited report, the Bush Administration has still not effected a clean-up of the indoor air in apartments and workspaces near the site.

Screenings conducted at the Mount Sinai Medical Center and released in the September 10, 2004, Morbidity and Mortality Weekly Report (MMWR) of the federal Centers For Disease Control and Prevention (CDC), produced the following results:

''Both upper and lower respiratory problems and mental health difficulties are widespread among rescue and recovery workers who dug through the ruins of the World Trade Center in the days following its destruction in the attack of September 11, 2001.

''An analysis of the screenings of 1,138 workers and volunteers who responded to the World Trade Center disaster found that nearly three-quarters of them experienced new or worsened upper respiratory problems at some point while working at Ground Zero. And half of those examined had upper and/or lower respiratory symptoms that persisted up to the time of their examinations, an average of eight months after their WTC efforts ended.''

A larger study released in 2006 found that roughly 70 percent of nearly 10,000 workers tested at Mount Sinai from 2002 to 2004 reported that they had new or substantially worsened respiratory problems while or after working at ground zero. This study showed that many of the respiratory ailments, including sinusitis and asthma, and gastrointestinal problems related to them, initially reported by ground zero workers persisted or grew worse over time. Most of the ground zero workers in the study who reported trouble breathing while working there were still having those problems two and a half years later, an indication of chronic illness unlikely to improve over time.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

The SPEAKER pro tempore, Ms. SUTTON, ruled that the resolution submitted did present a question of the privileges of the House under rule IX.

When said resolution was considered.

Pursuant to the previous order of the House, the previous question was ordered without intervening motion except one motion to refer.

Mr. KUCINICH moved that the resolution be referred to the Committee on the Judiciary.

The question being put viva, voce,

Will the House agree to said motion to refer the resolution?

The SPEAKER pro tempore, Ms. SUTTON, announced that the nays had it.

Mr. KUCINICH objected to the vote on the ground that a quorum was not present and not voting.

The SPEAKER pro tempore, Ms. SUTTON, pursuant to the previous order of the House and as though under clause 8, rule XX, announced that further proceedings on the question were postponed until Wednesday, June 11, 2008.

The point of no quorum was considered as withdrawn.

¶70.10 H. RES. 1258—UNFINISHED BUSINESS

The SPEAKER pro tempore, Mr. DOYLE, pursuant to clause 8, rule XX, announced the unfinished business to be the motion to refer the resolution (H. Res. 1258) impeaching George W. Bush, President of the United States, of high crimes and misdemeanors.

The question being put, viva voce,

Will the House agree to the motion to refer?

The SPEAKER pro tempore, Mr. DOYLE, announced that the yeas had it.

Mr. KUCINICH demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	251
	Nays	166

¶70.11 [Roll No. 401]

So, the motion to refer was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PRIVILEGES OF THE HOUSE

(¶70.22)

A RESOLUTION DIRECTING THE SERGEANT AT ARMS TO ENSURE THAT ALL MEMBERS, COMMITTEES, AND OFFICES OF THE HOUSE ARE ALERTED OF THE DANGERS OF ELECTRONIC ATTACKS ON THE COMPUTERS AND INFORMATION SYSTEMS USED IN CARRYING OUT THEIR OFFICIAL DUTIES AND ARE FULLY BRIEFED ON HOW TO PROTECT THEMSELVES, THEIR OFFICIAL RECORDS, AND THEIR COMMUNICATIONS FROM ELECTRONIC SECURITY BREACHES PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE REFERRED A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE TO THE COMMITTEE ON HOUSE ADMINISTRATION.

On June 11, 2008, Mr. WOLF rose to a question of the privileges of the House and submitted the following resolution (H. Res. 1263):

Whereas beginning in August 2006, several of the computers used by Congressman Frank R. Wolf, a Representative from the Commonwealth of Virginia, in carrying out his official and representational duties were compromised by an outside source;

Whereas the Chief Administrative Officer of the House of Representatives, acting through House Information Resources (HIR), alerted Congressman Wolf to this incident and cleaned and returned the compromised computers to the Congressman's office;

Whereas since this attack, it has been discovered that computers in the offices of other Members, as well as in the office of at least one committee of the House, have been similarly compromised;

Whereas in subsequent meetings with HIR and officials from the Federal Bureau of Investigation, the outside source responsible for these incidents was revealed to be located in the People's Republic of China;

Whereas according to HIR, when Members use Blackberry devices or cell phones while traveling overseas, especially in nations in which access to information is tightly controlled by the government, they are at risk of having their conversations or other personal information recorded or collected without authorization;

Whereas HIR, the FBI, and the House Security Office briefed the affected offices on the security breaches that have occurred, and have done a good job in attempting to protect other offices of the House from similar threats; and

Whereas it is nevertheless not clear that all Members, committees, and other offices of the House are aware of the existing threats against the security and confidentiality of the electronic records of their offices or their overseas electronic communications, nor is it clear that Members and other House personnel have been fully briefed on how to protect themselves, their official records, and their communications from electronic security breaches: Now, therefore, be it

Resolved, That the Chief Administrative Officer and the Sergeant at Arms of the House of Representatives, in consultation with the Director of the Federal Bureau of Investigation, should take timely action to ensure that all Members, committees, and offices of the House are alerted of the dangers of electronic attacks on the computers and information systems used in carrying out their official duties and are fully briefed on how to protect themselves, their official records, and their communications from electronic security breaches.

The SPEAKER pro tempore, Ms. DEGETTE, ruled that the resolution submitted did present a question of the privileges of the House under rule IX.

When said resolution was considered.

After debate,

Ms. LOFGREN of California, moved that the resolution be referred to the Committee on House Administration.

By unanimous consent, the previous question was ordered on the motion to its adoption or rejection.

The question being put viva, voce,

Will the House agree to said motion?

The SPEAKER pro tempore, Mr. MCNULTY, announced that the yeas had it.

So, the motion was agreed to.

POINT OF ORDER

(¶71.14)

A WAIVER OF ALL POINTS OF ORDER AGAINST CONSIDERATION OF A BILL PROVIDED IN A SPECIAL ORDER OF BUSINESS ADOPTED BY THE HOUSE WAIVES ANY POINT OF ORDER UNDER CLAUSE 10 OF RULE XXI.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On June 12, 2008, Mr. WELLER of Illinois, made a point of order against consideration of said bill, and said:

''Madam Speaker, I raise a point of order against consideration of this bill because the bill violates clause 10 of rule XXI of the Rules of the House of Representatives which provides in pertinent part that it shall not be in order to consider any bill if the provisions of such measure affecting direct spending and revenues have the net effect of increasing the deficit over the 5- or 10-year budget scoring window.

''This rule is commonly referred to as the pay-as-you-go rule or PAYGO and was enacted by the majority with great fanfare at the beginning of this Congress.

''In reviewing the estimate prepared by the Congressional Budget Office, I note that they have scored this bill as increasing the deficit by $14 billion over the next 5 years, and nearly $10 billion over the coming decade.

''Madam Speaker, I ask unanimous consent that the table prepared by the Congressional Budget Office appear at this point in the RECORD.

''Madam Speaker, given this overwhelming evidence that this bill does have the net effect of increasing the deficit over both scoring windows, I must respectfully insist on my point of order that the bill violates the PAYGO rule.''.

Mr. RANGEL was recognized to speak to the point of order and said:

''Madam Speaker, I ask that the gentleman's motion receive the consideration it deserves.''.

The SPEAKER pro tempore, Mrs. TAUSCHER, overruled the point of order, and said:

''The gentleman from Illinois makes a point of order against consideration of H.R. 5749 on the ground that the bill includes provisions affecting direct spending or revenues that would have the net effect of increasing the Federal budget deficit. That point of order sounds in clause 10 of rule XXI.

''The special order of business prescribed by the adoption of House Resolution 1265 waives any such point of order. The Chair will read the operative sentence of House Resolution 1265: ''All points of order against consideration of the bill are waived except those arising under clause 9 of rule XXI.

''The Chair finds that the point of order raised by the gentleman from Illinois has been waived.

''The Chair therefore holds that the point of order is overruled.''.

Mr. WELLER of Illinois, appealed the ruling of the Chair.

Mr. RANGEL moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mrs. TAUSCHER, announced that the yeas had it.

Mr. WELLER of Illinois, demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	217
	Nays	185

¶71.15 [Roll No. 410]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶79.22)

TO A BILL SETTLING LAND CLAIMS OF TWO TRIBAL COMMUNITIES IN THE STATE OF

MICHIGAN, AN AMENDMENT PROPOSED IN A MOTION TO RECOMMIT BROACHING AN ENTIRELY SEPARATE SUBJECT (AN ALTERNATIVE FUEL PROCUREMENT REQUIREMENT FOR FEDERAL AGENCIES) IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On June 25, 2008, Mr. RAHALL made a point of order against said motion to recommit with instructions, and said:

''Mr. Speaker, I reserve a point of order.''.

Mr. HENSARLING was recognized to speak to the point of order and said:

''Thank you, Mr. Speaker.

''As I listened very carefully to this debate, it is clear that the majority of the speakers feel very passionately that this is a debate about economic development for the region, a distressed region of Michigan. It's about economic development for a Native American tribe. Someone would have to be totally out of touch with their constituency not to realize that the number-one challenge to the economic well-being of our citizens is the high cost of energy.

''So, Mr. Speaker, this motion to recommit is very simple. It removes a provision in last year's 'non-energy' energy bill that would prevent the government from using its purchasing power to spur the growth of American energy resources, such as coal-to-liquids technology, oil shale, and tar sands.

''This is especially important since we know that right north of the border, right north of Michigan, that our neighbor to the north, Canada, is rich in these resources. Particularly, so much of their energy and many of their exports come from tar sands.

''The real estate that we are talking about in question could be greatly impacted should the section 526 not be repealed. Because as most people know who have studied the issue, Mr. Speaker, the United States Air Force wishes to enter into long-term contracts in order to help develop these promising new alternative energy alternatives. Yet in the Democrat 'non-energy' energy bill, they would be effectively prevented from doing so. That will clearly have an adverse impact upon the economic growth, the economic well-being of the Native American tribe in question, not to mention the real estate in question as well.

''So, again, Mr. Speaker, when we look at energy, energy now has become a health care issue. It has become an education issue. It is certainly a Native American issue. It is an economic growth issue as well. What has happened is we have seen that the Democrat majority simply wants to bring us bills that somehow believe that if we beg OPEC, we can bring down the price of energy at the pump. Maybe if we sue OPEC, we can bring down the price of energy at the pump. Maybe if we somehow berate oil companies, that will cause prices to go down at the pump. Maybe we should tax them. Well, they will take those taxes and put it right back in their price.

''But what the Democrat majority hasn't decided to do is to produce American energy in America and bring down the cost of energy that way. Not only have they decided not to do it, Mr. Speaker, they are moving in the complete opposite direction with this section 526, which prevents the Federal Government from contracting in order to spur the growth of these promising alternative fuel sources, like coal-to-liquid technology, like oil shale, like tar sands. They are moving in the complete opposite direction.

''Mr. Speaker, not unlike probably yourself and many of my other colleagues on the floor on both sides of the aisle, we hear from our constituents. I have heard from a constituent that says the high cost of energy now is preventing them from having three meals a day. The high cost of energy has caused them to have their adult children to have to move back in with them. Yet our Democrat majority will not bring a bill to the floor that actually produces American energy.

''What Republicans want to do on this side of the aisle is, number one, continue to develop our renewable energy resources. Mr. Speaker, before coming to Congress I was an officer in a green energy company. Those technologies are promising. But, Mr. Speaker, until they are technologically and economically viable will be years to come. In the meantime, people have to take their children to school every day. People have to go to work every day. Many have to go and see their physicians.

''And so we need to bring down the cost of this energy now. We know that we haven't built a refinery in America in almost 30 years. Our capacity is down. We are having to import not just crude but we are having to import refined gasoline as well. Yet, the Democrat majority does nothing, does nothing to help build more refineries.

''We need diversification. We need nuclear energy. We sit here and talk to the American people about the threat of global warming, yet we know nuclear energy has no greenhouse emissions whatsoever.

''It's imperative that we pass this motion to recommit and get more American energy today.''.

Mr. RAHALL was further recognized and said:

''Mr. Speaker, certainly after listening to the gentleman's diatribe, or whatever it was he was talking about, it's certainly not related to the pending legislation. Never once did I hear the word 'Indian.' It's a further example of the petty politics the minority is trying to play with the serious problems confronting the American people.

''I insist on my point of order, and I raise a point of order that the motion to recommit contains nongermane instructions, in violation of clause 7 of rule XVI. The instructions in the motion to recommit address an unrelated matter to the pending legislation.''.

Mr. HENSARLING was further recognized and said:

''Mr. Speaker, I wish to be heard.

''Again, Mr. Speaker, I don't know how, when you can have speaker after speaker come to the floor and say essentially this is a bill having to do with the economic well-being of a distressed area of Michigan the economic well-being of a Native American tribe, and not believe that somehow the cost of energy factors into the economic well-being.

''We are talking also about a piece of real estate. We are talking about the value of underlying minerals in this piece of real estate that will be greatly impacted on whether or not this section 526 is repealed or not.

''I would just simply ask the Speaker, when is it germane to bring a motion to produce American energy in America and bring down the high cost of energy for the American people? If not now, when, Mr. Speaker? When will the Democrat majority allow these motions to be voted on?''.

The SPEAKER pro tempore, Mr. ROSS, sustained the point of order, and said:

''The bill, as amended, addresses settling certain land claims of two tribal communities in the State of Michigan. The instructions in the motion to recommit address an entirely different subject matter; namely, alternative fuel procurement. Accordingly, the instructions are not germane. The point of order is sustained. The motion is not in order.''.

Mr. HENSARLING appealed the ruling of the Chair.

The question being stated, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. RAHALL moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. ROSS, announced that the yeas had it.

Mr. HENSARLING objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 6, rule XX, and the call was taken by electronic device.

When there appeared { Yeas ..... 226 / Nays 189

¶79.23 [Roll No. 457]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶83.13)

TO A BILL CONFINED TO DESIGNATION OF A SINGLE NATIONAL HISTORIC TRAIL, AN

AMENDMENT PROPOSED IN A MOTION TO RECOMMIT ADDRESSING ALL TRAILS OF THE NATIONAL TRAILS SYSTEM ACT IS NOT GERMANE.

On July 10, 2008, Mr. RAHALL made a point of order against said motion to recommit with instructions, and said:

''Madam Speaker, I reserve a point of order.''

Ms. FALLIN was recognized to speak to the point of order and said:

''Madam Speaker, America has slammed into an energy wall in the past 18 months, with gas prices escalating 70 percent since the beginning of the 110th Congress when the current Democratic leadership took control. Americans are now paying over $4 and change for a gallon of gasoline. This dire situation affects not only drivers, but ripples through all commerce of the United States, from the cost of food, to building materials, to tourism, to jobs, to health care, and in short, our economic security. Increased supply from our own American resources is one tool that we have in our tool box to help us get out of this mess.

''This is a bipartisan solution, as demonstrated by Speaker PELOSI's recent request to President Bush to release oil from the Strategic Petroleum Reserve to help funnel more product to American refineries, and thus more gas to local gas stations.

''While this is a small step in a positive direction, the Democratic-controlled House of Representatives has only compounded the problem of American energy supplies. The current leadership has scheduled and passed over a dozen bills from the Committee on Natural Resources alone restricting or potentially restricting energy development on the public lands of the United States. We also expect a package of over 60 more bills from the Senate before we adjourn, most of which will impact energy exploration and development on public lands.

''The Democratic leadership of the House of Representatives has also failed to lift the congressional moratoria on the development of oil and natural gas resources from the Outer Continental Shelf. It has blocked access to over 1 million acres of uranium-rich lands in the southwestern United States, fuel which could be harnessed to produce clean, air-friendly nuclear energy. It has locked up oil shale and stopped energy transmission corridors across public lands. It has even tried to stop wind energy.

''While this trail bill before us may seem like small potatoes, it is indicative of a larger problem. The more lands we place off-limits to multiple uses, including energy development, then the more we have to rely on others for our economic feedstock of energy.

''This trail will affect lands and waters in more than nine States in very populous eastern areas and the mid-Atlantic region of America. At least, thanks to Congressman PEARCE's amendment, we will know exactly what energy resources will be impacted by this designation. This is not true for all trails designated under the National Trails Act.

''Currently, there are thousands of miles of trails affecting every region of the United States, and with the trend in legislative activity in this Congress, we can certainly expect many more in the near future.

''This motion to recommit will ensure that we do not inadvertently cut off crucial energy supplies during the current crisis when we designate trails under the National Trails Act. It expands on language authored by Congressman Rob WITTMAN, now in section three of the bill, which was readily accepted by both Democrats and Republicans during the markup of H.R. 1286 in the Committee on Natural Resources just 2 weeks ago. What is good for the Washington-Rochambeau trail should be good for all trails, wherever located.

''And, Madam Speaker, as I just mentioned, this House just voted unanimously on an amendment by Congressman PEARCE for an energy assessment on this trail, so why should we prohibit or hinder the development, the production, the conveyance, or transmission of energy on any trail in the United States? I ask for your support.''.

Mr. RAHALL was further recognized and said:

''Madam Speaker, I insist on my point of order and raise a point of order that the motion to recommit contains nongermane instructions in violation of clause 7 of rule XVI. The instructions in the motion to recommit address an unrelated matter within the jurisdiction of a committee not represented in the underlying bill.

''The second reason, the motion to recommit uses the word 'promptly,' as we all know, which kills a bill.

''And third, the motion to recommit is the exact language already in the bill. That language states 'nothing in the amendment made by section 2 of this act shall prohibit or hinder the development, production, conveyance, or transmission of energy,' the exact repeat language of the motion to recommit.

''Therefore, I insist on my point of order.''.

The SPEAKER pro tempore, Mrs. TAUSCHER, sustained the point of order, and said:

''The gentleman from West Virginia makes a point of order that the instructions in the motion to recommit are not germane.

''As recorded in section 937 of the House Rules and Manual, a specific subject may not be amended by a provision general in nature, even when of the same class as the specific subject. For example, as cited on page 719 of the Manual, to a bill relating to one State maritime academy, an amendment relating to all State maritime academies is not germane.

''The bill as amended confines its attention to a single national historic trail designation. The instructions in the motion to recommit extend to all trails addressed by the National Trails System Act.

''As such, the Chair finds that the instructions in the motion to recommit are not germane. The point of order is sustained. The motion is not in order.''.

PRIVILEGES OF THE HOUSE

(¶85.38)

A RESOLUTION PRESENTING ARTICLES OF IMPEACHMENT AGAINST THE PRESIDENT OF THE UNITED STATES PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE REFERRED A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE TO THE COMMITTEE ON THE JUDICIARY.

On July 15, 2008, Mr. KUCINICH rose to a question of the privileges of the House and submitted the following resolution (H. Res. 1345):

Resolved, That President George W. Bush be impeached for high crimes and misdemeanors, and that the following Article of Impeachment be exhibited to the United States Senate:

An Article of Impeachment exhibited by the House of Representatives of the United States of America in the name of itself and the people of the United States of America, in maintenance and support of its impeachment against President George W. Bush for high crimes and misdemeanors.

ARTICLE ONE—DECEIVING CONGRESS WITH FABRICATED THREATS OF IRAQ WMDS TO FRAUDULENTLY OBTAIN SUPPORT FOR AN AUTHORIZATION OF THE USE OF MILITARY FORCE AGAINST IRAQ

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the Office of President of the United States, and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty under article II, section 3 of the Constitution ''to take care that the laws be faithfully executed,'' deceived Congress with fabricated threats of Iraq Weapons of Mass Destruction to fraudulently obtain support for an authorization for the use of force against Iraq and used that fraudulently obtained authorization, then acting in his capacity under article II, section 2 of the Constitution as Commander in Chief, to commit U.S. troops to combat in Iraq.

To gain congressional support for the passage of the Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq, the President made the following material representations to the Congress in S.J. Res. 45:

1. That Iraq was ''continuing to possess and develop a significant chemical and biological weapons capability. . . .''

2. That Iraq was ''actively seeking a nuclear weapons capability. . . .''

3. That Iraq was ''continuing to threaten the national security interests of the United States and international peace and security.''

4. That Iraq has demonstrated a ''willingness to attack, the United States. . . .''

5. That ''members of al Qaeda, an organization bearing responsibility for attacks on the United States, its citizens and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq. . . .''

6. The ''attacks on the United States of September 11, 2001, underscored the gravity of the threat that Iraq will transfer weapons of mass destruction to international terrorist organizations. . . .''

7. That Iraq ''will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so. . . .''

8. That an ''extreme magnitude of harm that would result to the United States and its citizens from such an attack. . . .''

9. That the aforementioned threats ''justify action by the United States to defend itself. . . .''

10. The enactment clause of section 2 of S.J. Res. 45, the Authorization of the Use of the United States Armed Forces authorizes the President to ''defend the national security interests of the United States against the threat posed by Iraq. . . .''

Each consequential representation made by the President to the Congress in S.J. Res. 45 in subsequent iterations and the final version was unsupported by evidence which was in the control of the White House.

To wit:

1. Iraq was not ''continuing to possess and develop a significant chemical and biological weapons capability . . . ''

''A substantial amount of Iraq's chemical warfare agents, precursors, munitions and production equipment were destroyed between 1991 and 1998 as a result of Operation Desert Storm and United Nations Special Commission (UNSCOM) actions. There is no reliable information on whether Iraq is producing and stockpiling chemical weapons or whether Iraq has or will establish its chemical warfare agent production facilities.''

The source of this information is the Defense Intelligence Agency, a report called, ''Iraq—Key WMD Facilities—An Operational Support Study,'' September 2002.

''Statements by the President and Vice President prior to the October 2002 National Intelligence Estimate regarding Iraq's chemical weapons production capability and activities did not reflect the intelligence community's uncertainties as to whether such production was ongoing.''

The source of this information is the Senate Select Committee on Intelligence, a report entitled ''Report on Whether Public Statements Regarding Iraq By U.S. Government Officials Were Substantiated By Intelligence Information.'' June 5, 2008.

''In April and early May 2003, military forces found mobile trailers in Iraq. Although intelligence experts disputed the purpose of the trailers, administration officials repeatedly asserted that they were mobile biological weapons laboratories. In total, President Bush, Vice President CHENEY, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice made 34 misleading statements about the trailers in 27 separate public appearances. Shortly after the mobile trailers were found, the Central Intelligence Agency and the Defense Intelligence Agency issued an unclassified white paper evaluating the trailers. The white paper was released without coordination with other members of the intelligence community, however. It was later disclosed that engineers from the Defense Intelligence Agency who examined the trailers concluded that they were most likely used to produce hydrogen for artillery weather balloons. A former senior intelligence official reported that 'only one of 15 intelligence analysts assembled from three agencies to discuss the issue in June endorsed the white paper conclusion.'''

The source of this information is the House Committee on Government Reform, minority staff, ''Iraq on the Record: Bush Administration's Public Statements about Chemical and Biological Weapons.'' March 16, 2004.

Former chief of CIA covert operations in Europe, Tyler Drumheller, has said that the CIA had credible sources discounting weapons of mass destruction claims, including the primary source of biological weapons claims, an informant who the Germans code-named ''Curveball'' whom the Germans had informed the Bush administration was a likely fabricator of information including that concerning the Niger yellowcake forgery. Two other former CIA officers confirmed Drumheller's account to Sidney Blumenthal who reported the story at Salon.com on September 6, 2007, which in fact is the media source of this information.

''In practical terms, with the destruction of the al Hakam facility, Iraq abandoned its ambition to obtain advanced biological weapons quickly. The Iraq Survey Group (ISG) found no direct evidence that Iraq, after 1996, had plans for a new biological weapons program or was conducting biological weapons-specific work for military purposes. Indeed, from the mid-1990s, despite evidence of continuing interest in nuclear and chemical weapons, there appears to be a complete absence of discussion or even interest in biological weapons at the Presidential level. In spite of exhaustive investigation, the Iraq Survey Group found no evidence that Iraq possessed, or was developing, biological weapon agent production systems mounted on road vehicles or railway wagons. The Iraq Survey Group harbors severe doubts about the source's credibility in regards to the breakout program.'' That's a direct quote from the ''Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's WMD,'' commonly known as the Duelfer report by Charles Duelfer.

''While a small number of old, abandoned chemical munitions have been discovered, the Iraq Survey Group judges that Iraq unilaterally destroyed its undeclared chemical weapons stockpile in 1991. There are no credible indications that Baghdad resumed production of chemical munitions thereafter, a policy the Iraq Survey Group attributes to Baghdad's desire to see sanctions lifted, or rendered ineffectual, or its fear of force against it should WMD be discovered.''

The source of this information, the ''Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's WMD,'' Charles Duelfer.

2. Iraq was not ''actively seeking a nuclear weapons capability.''

The key finding of the Iraq Survey Group's report to the Director of Central Intelligence found that ''Iraq's ability to reconstitute a nuclear weapons program progressively decayed after that date. Saddam Husayn (sic) ended the nuclear program in 1991 following the Gulf War. Iraq Survey Group found no evidence to suggest concerted efforts to restart the program.''

The source of this information, the ''Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's WMD,'' Charles Duelfer.

Claims that Iraq was purchasing uranium from Niger were not supported by the State Department's Bureau of Intelligence and Research in the National Intelligence Estimate of October 2002.

The CIA had warned the British Government not to claim Iraq was purchasing uranium from Niger prior to the British statement that was later cited by President Bush, this according to George Tenet of the Central Intelligence Agency on July 11, 2003.

Mohamed ElBaradei, the Director General of the International Atomic Energy Agency, in a ''Statement to the United Nations Security Council on The Status of Nuclear Inspections in Iraq: An Update'' on March 7, 2003, said as follows:

''One, there is no indication of resumed nuclear activities in those buildings that were identified through the use of satellite imagery as being reconstructed or newly erected since 1998, nor any indication of nuclear-related prohibited activities at any inspected sites. Second, there is no indication that Iraq has attempted to import uranium since 1990. Three, there is no indication that Iraq has attempted to import aluminum tubes for use in centrifuge enrichment. Moreover, even had Iraq pursued such a plan, it would have been—it would have encountered practical difficulties in manufacturing centrifuges out of the aluminum tubes in question. Fourthly, although we are still reviewing issues related to magnets and magnet production, there is no indication to date that Iraq imported magnets for use in a centrifuge enrichment program. As I stated above, the IAEA (International Atomic Energy Agency) will naturally continue to further scrutinize and investigate all of the above issues.''

3. Iraq was not ''continuing to threaten the national security interests of the United States.''

''Let me be clear: analysts differed on several important aspects of [Iraq's biological, chemical, and nuclear] programs and those debates were spelled out in the Estimate. They never said there was an 'imminent' threat.''

George Tenet, who was Director of the CIA, said this in Prepared Remarks for Delivery at Georgetown University on February 5, 2004.

''We have been able to keep weapons from going into Iraq. We have been able to keep the sanctions in place to the extent that items that might support weapons of mass destruction have had some controls on them. It's been quite a success for 10 years.'' The source of this statement, Colin Powell, Secretary of State, in an interview with Face the Nation, February 11, 2001.

On July 23, 2002, a communication from the Private Secretary to Prime Minister Tony Blair, ''Memo to British Ambassador David Manning'' reads as follows:

''British Secret Intelligence Service Chief Sir Richard Billing Dearlove reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the U.N. route and no enthusiasm for publishing material on the Iraqi regime's record. There was little discussion in Washington of the aftermath after military action. The Foreign Secretary said he would discuss this with Colin Powell this week. It seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided. But the case was thin. Saddam Hussein was not threatening his neighbors, and his WMD capability was less than that of Libya, North Korea or Iran. We should work up a plan for an ultimatum to Saddam to allow back in the U.N. weapons inspectors. This would also help with the legal justification for the use of force.''

4. Iraq did not have the ''willingness to attack, the United States.''

''The fact of the matter is that both baskets, the U.N. basket and what we and other allies have been doing in the region, have succeeded in containing Saddam Hussein and his ambitions. His forces are about one-third their original size. They really don't possess the capability to attack their neighbors the way they did 10 years ago.'' The source of this quote, Colin Powell, Secretary of State, in a transcript of remarks made to German Foreign Minister Joschka Fischer in February 2001.

The October 2002 National Intelligence Estimate concluded that ''Baghdad for now ap-

pears to be drawing a line short of conducting terrorist attacks with conventional or chemical or biological weapons against the United States, fearing that exposure of Iraqi involvement would provide Washington a stronger case for making war.''

5. Iraq had no connection with the attacks of 9/11 or with al Qaeda's role in 9/11.

''The report of the Senate Select Committee on Intelligence documents significant instances in which the administration went beyond what the intelligence community knew or believed in making public claims, most notably on the false assertion that Iraq and al Qaeda had an operational partnership and joint involvement in carrying out the attacks of September 11.'' This is a quote from Senator John D. Rockefeller, IV, the chairman of the Senate Select Committee on Intelligence entitled ''Additional Views of Chairman John D. Rockefeller, IV'' on page 90.

Continuing from Senator Rockefeller:

''The President and his advisors undertook a relentless public campaign in the aftermath of the attacks to use the war against al Qaeda as a justification for overthrowing Saddam Hussein. Representing to the American people that the two had an operational partnership and posed a single, indistinguishable threat was fundamentally misleading and led the Nation to war on false premises.'' Senator Rockefeller.

Richard Clarke, a National Security Advisor, in a memo of September 18, 2001 titled ''Survey of Intelligence Information on Any Iraq Involvement in the September 11 Attacks'' found no ''compelling case'' that Iraq had either planned or perpetrated the attacks, and that there was no confirmed reporting on Saddam cooperating with bin Laden on unconventional weapons.

On September 17, 2003, President Bush said: ''No, we've got no evidence that Saddam Hussein was involved with September 11. What the Vice President said was is that he (Saddam) has been involved with al Qaeda.''

On June 16, 2004, a staff report from the 9/11 Commission stated: ''There have been reports that contacts between Iraq and al Qaeda also occurred after bin Laden had returned to Afghanistan in 1996, but they do not appear to have resulted in a collaborative relationship. Two senior bin Laden associates have adamantly denied that any ties existed between al Qaeda and Iraq. We have no credible evidence that Iraq and al Qaeda cooperated on attacks against the United States.''

''Intelligence provided by former Undersecretary of Defense Douglas J. Feith to buttress the White House case for invading Iraq included 'reporting of dubious quality or reliability' that supported the political views of senior administration officials rather than the conclusions of the intelligence community, this according to a report by the Pentagon Inspector General.

''Feith's office 'was predisposed to finding a significant relationship between Iraq and al Qaeda,' according to portions of the report released by Senator Carl Levin. The Inspector General described Feith's activities as 'an alternative intelligence assessment process.' '' The source of this information is a report in the Washington Post dated February 9, 2007, page A–1, an article by Walter Pincus and Jeffrey Smith entitled ''Official's Key Report on Iraq is Faulted, 'Dubious' Intelligence Fueled Push for War.''

6. Iraq possessed no weapons of mass destruction to transfer to anyone.

Iraq possessed no weapons of mass destruction to transfer. Furthermore, available intelligence information found that the Iraq regime would probably only transfer weapons of mass destruction to terrorist organizations if under threat of attack by the United States.

According to information in the October 2002 National Intelligence Estimate (NIE) on Iraq that was available to the administration at the time that they were seeking congressional support for the authorization of use of force against Iraq, the Iraq regime would probably only transfer weapons to a terrorist organization if ''sufficiently desperate'' because it feared that ''an attack that threatened the survival of the regime were imminent or unavoidable.''

''The Iraqi Intelligence Service (IIS) probably has been directed to conduct clandestine attacks against the United States and Allied interests in the Middle East in the event the United States takes action against Iraq. The IIS probably would be the primary means by which Iraq would attempt to conduct any chemical and biological weapon attacks on the U.S. homeland, although we have no specific intelligence information that Saddam's regime has directed attacks against U.S. territory.''

7. Iraq had no weapons of mass destruction and therefore had no capability of launching a surprise attack against the United States or its Armed Forces and no capability to provide them to international terrorists who would do so.

Iraq possessed no weapons of mass destruction to transfer. Furthermore, available intelligence information found that the Iraq regime would probably only transfer weapons of mass destruction to terrorist organizations if under severe threat of attack by the United States.

According to information in the October 2002 National Intelligence Estimate on Iraq that was available to the administration at the time they were seeking congressional support for the authorization of the use of force against Iraq, the Iraqi regime would probably only transfer weapons to a terrorist organization if ''sufficiently desperate'' because it feared that ''an attack that threatened the survival of the regime were imminent or unavoidable.'' That, again, from the October 2002 National Intelligence Estimate on Iraq.

''The Iraqi Intelligence Service probably has been directed to conduct clandestine attacks against U.S. and Allied interests in the Middle East in the event the United States takes action against Iraq. The Iraq Intelligence Service probably would be the primary means by which Iraq would attempt to conduct any chemical or biological weapons attacks on the U.S. homeland, although we have no specific intelligence information that Saddam's regime has directed attacks against U.S. territory.''

As reported in the Washington Post on March 1, 2003, in 1995, Saddam Hussein's son-in-law, Hussein Kamel, had informed U.S. and British intelligence officers that ''all weapons—biological, chemical, missile, nuclear—were destroyed.'' That from the Washington Post, March 1, 2003, page A15, an article entitled ''Iraqi Defector Claimed Arms Were Destroyed By 1995,'' by Colum Lynch.

The Defense Intelligence Agency, in a report called ''Iraq—Key WMD Facilities—An Operational Report Study'' in September 2002, said this:

''A substantial amount of Iraq's chemical warfare agents, precursors, munitions and production equipment were destroyed between 1991 and 1998 as a result of Operation Desert Storm and United Nations Special Commission (UNSCOM) actions. There is no reliable information on whether Iraq is producing and stockpiling chemical weapons or whether Iraq has or will establish its chemical warfare agent production facilities.''

8. There was not a real risk of an ''extreme magnitude of harm that would result to the United States and its citizens from such an attack'' because Iraq had no capability of attacking the United States.

Here's what Colin Powell said at the time: ''Containment has been a successful policy, and I think we should make sure that we continue it until such time as Saddam Hussein comes into compliance with the agreements he made at the end of the Gulf War.'' Speaking of Iraq, Secretary of State Powell said, ''Iraq is not threatening America.''

9. The aforementioned evidence did not ''justify the use of force by the United States to defend itself'' because Iraq did not have weapons of mass destruction, or have the intention or capability of using nonexistent WMDs against the United States.

10. Since there was no threat posed by Iraq to the United States, the enactment clause of the Senate Joint Resolution 45 was predicated on misstatements to Congress.

Congress relied on the information provided to it by the President of the United States. Congress provided the President with the authorization to use military force that he requested. As a consequence of the fraudulent representations made to Congress, the United States Armed Forces, under the direction of George Bush as Commander in Chief, pursuant to section 3 of the Authorization for the Use of Force which President Bush requested, invaded Iraq and occupies it to this day, at the cost of 4,116 lives of servicemen and -women, injuries to over 30,000 of our troops, the deaths of over 1 million innocent Iraqi civilians, the destruction of Iraq, and a long-term cost of over $3 trillion.

President Bush's misrepresentations to Congress to induce passage of a use of force resolution is subversive of the constitutional system of checks and balances, destructive of Congress' sole prerogative to declare war under article I, section 8 of the Constitution, and is therefore a High Crime. An even greater offense by the President of the United States occurs in his capacity as Commander in Chief, because he knowingly placed the men and women of the United States Armed Forces in harm's way, jeopardizing their lives and their families' future, for reasons that to this date have not been established in fact.

In all of these actions and decisions, President George W. Bush has acted in a manner contrary to his trust as President and Commander in Chief, and subversive of constitutional government, to the prejudice of the cause of law and justice and to the manifest injury of the people of the United States and of those members of the Armed Forces who put their lives on the line pursuant to the falsehoods of the President. Wherefore, President George W. Bush, by such conduct, is guilty of an impeachable offense warranting removal from office.

When said resolution was considered.

Pursuant to the previous order of the House, the previous question was ordered without intervening motion except one motion to refer.

Mr. KUCINICH moved that the resolution be referred to the Committee on the Judiciary.

The question being put viva, voce,

Will the House agree to said motion to refer the resolution?

The SPEAKER pro tempore, Mrs. DAVIS of California, announced that the yeas had it.

Mr. CONAWAY demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 238 / Nays 180

¶85.39 [Roll No. 492]

So, the motion to refer was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

WORDS TAKEN DOWN

(¶86.20)

A CRITICISM OF AN AMENDMENT AS AN ?*COM003*OUTRAGE? OR A ?BETRAYAL? IN TERMS NOT DIRECTED TO ITS PROPONENT OR ANOTHER INDIVIDUAL IS NOT UNPARLIAMENTARY.

On July 16, 2008, Mr. REYES, during debate, addressed the House and, during the course of his remarks,

Mr. HOEKSTRA demanded that certain words be taken down.

The Clerk read the words taken down as follows:

''Communities all around this country are hurting with $4 gas and all we get from the other side are charades as we've seen here tonight. The whole world watches as we try to do what's right. The whole world heard them say earlier that this was a vital and important piece of legislation that would fund the intelligence community. This is a betrayal of the work that is being done by men and women in the intelligence community that are putting their lives on the line to keep us safe.

''This is an outrage put forth by the politics, rather than wanting to get things done in this House. I will tell you Mr. Speaker, why would they want to derail——.''.

The SPEAKER pro tempore, Mr. SERRANO, held the words taken down not to be unparliamentary, and said:

''In the opinion of the Chair, the words complained of were not directed in such a way as to constitute a personality or otherwise transgress the bounds of decorum in debate.

''The gentleman from Texas may continue.''.

PERSONAL PRIVILEGES

(¶95.12)

A MEMBER ROSE TO A QUESTION OF PERSONAL PRIVILEGE UNDER RULE IX ON THE BASIS OF MEDIA CHARACTERIZATIONS OF HIS OFFICIAL CONDUCT.

On July 31, 2008, Mr. RANGEL rose to a question of personal privilege and said:

''Mr. Speaker, I promise you, this will not take anywhere near 1 hour.

''I was advised last night and assured this morning that the minority intended to bring up a resolution recommending that I be censured or that my conduct as reported in The New York Times would be declared that I was a discredit to this House.

''There is no one in this House that is more thick-skinned than I am in terms of playing politics, but playing with someone's reputation, especially someone that has felt so honored to serve in this House, I really think goes a step beyond that.

''In reading the allegations as to where my campaign headquarters was located or what the rent should have been, I have never felt more secure that I violated no law and no spirit of the law. But in order to make certain, to make certain that there is no cloud over my conduct in New York, I asked the Ethics Committee to look into it, to investigate, to do whatever is necessary to bring this to the House and to bring it to my family and friends.

''In addition to that, the same newspaper reported that I was overly aggressive in trying to raise funds in order to encourage moneys to go to a local college that encouraged minorities and others to get involved in public service. And even though there was no request for money, the mere fact that there was a cloud involved in the accusation by the newspapers, even though there have been more newspaper articles correcting it than anything else, I referred that to the Ethics Committee.

''Showing that I do want this to be sincerely investigated, I am asking the minority to allow me to join in with them in this resolution to say this matter should be cleared up. But there is no need, even for mean-spirited people in the minority, to say that I am a discredit to the United States Congress, based on a newspaper story, and, worse than that, there is no reason why Republicans or Democrats should do this to each other based on any newspaper story.

''So, I don't know the parliamentary inquiry, and, as most of you suspected, most of my friends say, Rangel, the less you say the better, get out of the headlines, and do all of these things. And this is normally what I recommend to newer Members: just leave it alone, it will go away. But my reputation won't, and I could not really appreciate if this body was to resolve that I bring dishonor to this wonderful House and this wonderful country, or that I be censured.

''So I make an appeal to the minority; let me join in with you with the request. Let me say if there is any doubt about anything, I would feel better if it went to the Ethics Committee. I have requested that it go to the Ethics Committee. Let us join in. But with not one scintilla of any evidence, other than a newspaper story, I think fairness would say, for God's sake, don't make politics out of a person's reputation. Strike out 'discredit,' strike out 'censure,' and put in there whatever the heck the Ethics Committee recommends. I join with them. I ask you to consider that.''.

PRIVILEGES OF THE HOUSE

(¶95.13)

A RESOLUTION ALLEGING THAT A MEMBER RECEIVED CAMPAIGN CONTRIBUTIONS IN VIOLATION OF LAW AND GIFTS IN VIOLATION OF HOUSE RULES, AND RESOLVING TO CENSURE THAT MEMBER, PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE.

On July 31, 2008, Mr. BOEHNER rose to a question of privileges of the house and submitted the following resolution (H. Res. 1396):

Whereas the representative from New York, Charles B. Rangel, serves as chairman of the House Ways and Means Committee, a position of considerable power and influence within the House of Representatives;

Whereas clause 1 of rule XXIII of the Rules of the House of Representatives provides that ''A Member, Delegate, Resident Commission, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.'';

Whereas the New York Times reported on July 11, 2008 that, ''While aggressive evictions are reducing the number of rent-stabilized apartments in New York, Representative Charles B. Rangel is enjoying four of them, including three adjacent units on the 16th floor overlooking Upper Manhattan in a building owned by one of New York's premier real estate developers.'';

Whereas the New York Times newspaper reported on July 11, 2008, that Rep. Rangel, ''paid a total rent of $3,894 monthly in 2007 for four apartments at Lennox Terrace, a 1,700-unit luxury development of six towers, with doormen, that is described in real estate publications as Harlem's most prestigious address.'';

Whereas the New York Times newspaper reported on July 11, 2008, that ''The current market-rate rent for similar apartments in Mr. Rangel's building would total $7,465 to $8,125 a month, according to the Web site of the owner, the Olnick Organization.'';

Whereas clause 5(a)(2)(A) of rule XXV of the Rules of the House defines a gift as, ''a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.'';

Whereas clause 5 of rule XXV provides that a Member, Delegate, or Resident Commissioner, officer, or employee of the House may not knowingly accept a gift in violation of that clause;

Whereas the New York Times newspaper reported on July 18, 2008, ''Mr. Rangel acknowledged that his use of one of the apartments as a campaign office 'presents an issue,' given that city and state guidelines require rentstabilized apartments to be used as a primary residence. ;

Whereas section 2520.11(k) of the Rent Stabilization Code of the State of New York prohibits the application of rent stabilization to ''housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary residence as determined by a court of competent jurisdiction.'';

Whereas in each of the years 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008, the campaign committee of the representative from New York, Representative Rangel, known as ''Rangel for Congress'' and by Federal Election Commission Identification Number C00302422, made disbursements to the Lennox Terrace Development Association for payment of office rent;

Whereas Olnick Organization, Inc. owns the Lennox Terrace Development;

Whereas according to the State of New York, Department of State, Division of Corporations, the Olnick Organization, Inc., owner of Representative Rangel's apartments, is an active domestic business corporation;

Whereas section 441b(a) of title 2, United States Code, states that ''it is unlawful for

any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.'';

Whereas Federal Election Commission records confirm that in 2004 Representative Rangel received $2,000 in campaign contributions from Sylvia Olnick, an owner of Olnick Organization, Inc. the company that owns his apartment building, and that Representative Rangel's separate political action committee also received $2,500 donations from Ms. Olnick in 2004 and 2006;

Whereas the New York Times newspaper reported on July 11, 2008, ''City records show that in 2005, a lobbyist for the Olnick Organization met with Mr. Rangel and Mr. Paterson, who was then the State Senate minority leader, as the company set out to win government approvals of a plan to expand Lenox Terrace and build another apartment complex in the Bronx.'';

Whereas Representative Rangel's acceptance of more than one rent-controlled apartment for his personal use is a violation of the House gift ban;

Whereas Representative Rangel's failure to disclose the aforementioned gifts on his annual Personal Financial Disclosure statements is a violation of House rules;

Whereas the acceptance by Representative Rangel's campaign of illegal corporate contributions from the Olnick Organization, Inc. violates Federal law;

Whereas the failure by Representative Rangel's campaign to disclose certain contributions from the Olnick Organization, Inc. violates Federal law: Now, therefore, be it

Resolved, That——

(1) by the conduct giving rise to this resolution the representative from New York, Representative Charles B. Rangel, has dishonored himself and brought discredit to the House and merits the censure of the House for same; and,

(2) the representative from New York, Mr. Rangel, is hereby so censured.

Pending consideration of said resolution.

The SPEAKER pro tempore, Mr. HOLDEN, ruled that the resolution submitted did present a question of the privileges of the House under rule IX.

Mr. HASTINGS of Florida, moved to lay the resolution on the table.

The question being put, viva voce,

Will the House lay on the table said resolution?

The SPEAKER pro tempore, Mr. HOLDEN, announced that the yeas had it.

Mr. BOEHNER demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	254
	Nays	138
	Answered present	34

¶95.14 [Roll No. 546]

So, the motion to lay the resolution on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶96.12)

A MOTION TO RECOMMIT A GENERAL APPROPRIATION BILL WITH INSTRUCTIONS THAT DIRECTLY AMENDED EXISTING LAW WAS HELD TO VIOLATE CLAUSE 2 OF RULE XXI AND RULED OUT OF ORDER.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On August 1, 2008, Mr. EDWARDS of Texas, made a point of order against the motion to recommit with instructions, and said:

''Mr. Speaker, I make a point of order against the motion to recommit with instructions, because it includes legislation and is not in order under clause 2 of rule XXI.

''Mr. Speaker, the gentleman's motion to instruct proposes legislation in an appropriations bill and would not be in order in the Committee of the Whole pursuant to clause 2 of rule XXI. I ask for a ruling from the Chair.''.

The SPEAKER pro tempore, Mr. WEINER, sustained the point of order, and said:

''The gentleman raises a point of order. Does any Member seek to be heard on the point of order? Hearing none, the Chair is prepared to rule.

''The gentleman from Texas makes a point of order that the instructions in the motion to recommit constitute legislation in violation of clause 2 of rule XXI.

''The Chair finds that the instructions propose the enactment of legislation directly amending existing law.

''The instructions therefore constitute legislation in violation of clause 2 of rule XXI.

''The point of order is sustained and the motion is not in order.''.

Mr. PETERSON of Pennsylvania, appealed the ruling of the Chair.

The question being stated, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. EDWARDS of Texas, moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. WEINER, announced that the yeas had it.

Mr. PETERSON of Pennsylvania, demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	230
	Nays	184

¶96.13 [Roll No. 562]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶99.23)

TO A BILL ADDRESSING A SUBJECT IN THE JURISDICTION OF THE COMMITTEE ON NATURAL RESOURCES, AN AMENDMENT PROPOSED IN A MOTION TO RECOMMIT BROACHING A SEPARATE SUBJECT IN THE JURISDICTION OF OTHER COMMITTEES IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On September 10, 2008, Mr. GRIJALVA made a point of order against the motion to recommit with instructions, and said:

''Madam Speaker, I make a point of order that the motion to recommit contains nongermane instructions in violation of clause 7 of rule XVI.

''Let me add, Madam Speaker, the Office of the Inspector General just released an investigation that they conducted on the office responsible for protecting the taxpayers in the royalty collections on our public lands. Let me just give a couple of quotes from the summary of the report.

''A culture of ethical failure. The single most serious problem our investigations revealed is a pervasive culture of exclusivity, exempt from the rules that govern all other employees of the Federal Government. In other cases, the results of our investigation revealed a program taxed with implementing a business model program, such as royalty-in-kind marketers, donned a private sector approach to essentially everything they did. This included effectively opting themselves out of the Ethics in Government Act, both in practice, and at one point even explored doing so by policy or regulation. We also discovered a culture of substance abuse and promiscuity in the RIK program, both within the program, including supervisors who engaged in illegal drug use and had sexual relations and consort with industry in the oil business.

''I mention those because the gravity of this particular problem, this pathological behavior, should be noted and looked into by this Congress. When we get our new energy policy on the floor—soon—I hope that the other side will join with me in ensuring that ethical reform of the agency responsible for the protection of the taxpayers' in-

vestment are part and parcel of any comprehensive energy reform.

''With that, I insist on the point of order, Madam Speaker.''.

The SPEAKER pro tempore, Mrs. TAUSCHER, sustained the point of order, and said:

''The gentleman from Arizona makes a point of order that the instructions in the motion to recommit are not germane. The bill, H.R. 3667, as amended, is confined to the study of two rivers under the Wild and Scenic Rivers Act and closely related issues.

''The instructions in the motion to recommit address H.R. 6566, a bill containing subjects unrelated to the pending bill and containing provisions outside the jurisdiction of the Committee on Natural Resources. As such, the Chair finds that the motion to recommit is not germane. The point of order is sustained.''.

Mr. SALI appealed the ruling of the Chair.

The question stated put, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. GRIJALVA moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mrs. TAUSCHER, announced that the yeas had it.

Mr. SALI demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	228
	Nays	197

¶99.24 [Roll No. 582]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

PERSONAL PRIVILEGES

(¶99.27)

A MEMBER ROSE TO A QUESTION OF PERSONAL PRIVILEGE UNDER RULE IX ON THE BASIS OF MEDIA CHARACTERIZATIONS OF HIS OFFICIAL CONDUCT.

On September 10, 2008, Mr. RANGEL rose to a question of personal privilege and said;

''Not to worry, my friend and colleagues. I have no intentions of keeping you for 1 hour, especially at this time of the day. But a couple of weeks ago the leadership of the minority had asked that I be thrown out of the House and censured based on a newspaper story, and I just want to thank those people who were thoughtful enough to think that even Members of Congress at some times should not rely on newspaper stories, but rather the Ethics Committee, which is bipartisan. More recently, however, my dear friend John BOEHNER has asked the Speaker to ask me to step aside as the chairman of the Ways and Means Committee.

''Now I say 'my dear friend John BOEHNER,' not as this word is tossed around in the House and Senate casually. I say it because John BOEHNER has, for many, many years, been my friend. We have worked so closely together in bipartisan areas that just a couple of weeks ago he allowed me to strengthen my relationship with Jim MCCRERY on the Ways and Means Committee to get unemployment compensation passed, and lauded our efforts, as I lauded his.

''I look around and I see George MILLER, who more than once said what a straight shooter he has been on Education. Steny HOYER has reminded me that, you know, he may disagree with John BOEHNER, but one thing is clear, that when you speak to him, that he says what he means and he means what he says.

''Well, I don't really think he means that I am incompetent and should step down. I don't think he really means or thinks that the Speaker is going to remove me from the House of Representatives. I don't think that he thinks I am a threat to this honorable House, which I am so proud to be a Member of. And for those people who say hey, let the Ethics Committee make the decision, I thank you for myself, for my name, for my friends and for my supporters.

''But believe it or not, I want to do this for the House of Representatives. I don't want any Member, Republican or Democrat, that is less politically secure than me to go through what I have had to go through for the last several weeks, because for them they never could survive. They would lose the election. And it won't be of anything that the voters knew. It would be what this Congress has done to each other.

''You know, the Ways and Means Committee, we made a special effort to be civil, even when we disagreed. We are so proud, with the support of Speaker PELOSI, of Steny HOYER, and, yes, John BOEHNER, working with us and trying to see what we can get done.

''At the end of this election, this Congress is going to have serious things to take care of. And we won't have Democratic solutions to taxes and health and Social Security and the variety of things with peace and war. We are going to have to resolve these issues as a United States Congress in a bipartisan way. There is not going to be any Democratic way to do it.

''And we are going to have to work together, not because we like each other, but we have a special responsibility to the people of the United States to make certain that our reputations may be low in terms of production, but if someone doesn't get health care, doesn't get that Social Security check, or for any reason finds himself without a house, they are not going to say the Democrats did it or the Republicans did it. They are going to say that this Congress let them down. It is going to be difficult, no matter who is the President or who is in the leadership.

''But it does not help to polarize this body and take wild shots at each other, whether they are chairmen or whether they are freshmen, knowing that at the end of the day you are not going to accomplish anything substantive, but you are going to make it more difficult for us to get a law.

''Do I say that John BOEHNER knows this? I tell you this: To show you the depth of my friendship, I am embarrassed that he feels he has to do this. There is no way in the world, based on his knowledge of my love for this House, that he would believe that I would do anything to dishonor it. And there is no question in my mind that at the end of the day, when the dust settles, that this issue is going to be moot. But I just don't know what the relationship between people is going to be. So I don't know the next move, but I would suggest that this is not the way to go.

''John BOEHNER, John BOEHNER, John BOEHNER. On the Tim Russert show, what they did to my friend there in saying that he was passing out illegal checks on the floor. A mistake? We all make them, and we all have to say we are sorry. But we all don't have to attack each other, because at the end of the day, that is all we may have to do to each other and get nothing done.

''I am suggesting to you this: Mistakes may have been made by me, and I briefly want to let you know the issues that are before the Ethics Committee as relates to three subjects. And I will be brief.

''Some 20 years ago, I was in the Dominican Republic. I got a call from a long and dear friend of mine to visit this place called Punta Cana, Dominican Republic, where he had some dream of making this a resort. I didn't want to go. My wife said friendship dictated it.

''I got there and he was telling me about the dream. And I was impressed with his dream, but I said, what the heck has that got to do with me?

''Well, he says, they want to start, they want to build some beach houses here, and there is the sand and there is the beach, and I think it's a good deal.

''I said, it may be a good deal for you, but I really don't need a beach house and I can't afford it. And, besides, there is no house here.

''He says, no, we haven't built them yet.

''So I said, look, Ted, I don't have the time.

''By the time they showed me the renderings, and they told me that it would cost $82,000, I said I wish I had the $82,000. Good-bye.

''He says, no, if you have got $28,000, then all they have to do is take the rentals from it and reduce the mortgages, and you can only use it for 9 months, but ultimately it would be yours.

''I said, we can talk.

''I refinanced my house. We had no savings, no nothing, and, quite frankly, I relied on the reputation, as I did then and will now, of a guy whose reputation is untouched.

''Gradually the mortgage was coming down. I had received no financial statement. I could not break the culture in terms of Dominican and Spanish. I received no money, no check. Never did. But let's face it, I should have known. And after this hit the fan, I had my lawyer to go. He broke the balance and found out the fact that they didn't give out statements. Some years there was no statement. There was a half a dozen statements that we have accumulated. And then we took the balance, added to the mortgage of about $50,000, another $20,000 for another room.

''All of the reports would indicate that RANGEL had a cash cow. RANGEL got some money. No. What happened was anybody who had a villa, whatever money they got, the hotel first would take their cut. Then they would take out taxes, they would take out renovations, they would take out hurricane expenses, they would take out interest, they would take out everything. At the end of the thing, whether your place was used or not used, they would equally distribute the money. Some years it was $5,000. Some years it was nothing.

''How many times did I use it in the nine weeks? I wish I had used it for nine weeks. I never spent nine days down there. I have never spent more than four days in any one year, and in several years I never was able to get there at all.

''What has this got to do with the charges and the allegations? The charges and the allegation is how did he get rid of the mortgage? And the mortgage is that if I had done what I was supposed to have done, I would have found some way to find our how the allocation was there. Because legally and theoretically, the reduction of the mortgage meant income was coming somewhere, even if I didn't receive it.

''And I should have found that out because, at the end of the day, my accountant tells me after 20 years of research there would be no tax liability because of the deduction of the foreign tax, which was higher, because I was an American and because of depreciation. They changed it and said that because I sold the house that I was raised in that it did not allow me to take full credit that I could have done for that year. It means, at the end of the day, my accountant believes that I would be liable for $5,000. Do I take that lightly? No.

''As a Member of Congress, as a public servant, I should have a higher standard than most people. Whether I owed $5,000 or $5 million, it was wrong, but it certainly doesn't mean that I should be kicked out of the House and say that I caused disservice to this august body. I just hope none of you have ever made mistakes on your income taxes, because what I have done is I've gone back 20 years and I've waived all statutes, and I'm prepared to pay whatever price there is, and I hope that at the end of the day that will take care of that. That's the roughest one.

''The second thing is that one would have you to believe that I received some type of a gift in housing, because the headline is that RANGEL had four subsidized apartments in New York. The fact that there is no law in having four subsidized apartments in New York, of course, is no account to anybody. I don't have four apartments.

''Briefly, what happened is that, 20 years ago, the kids were grown. We got tired of paying the bills on our house and getting into oil and doing all those things. My wife said let's move to an apartment. I'd spent all of my life on 32nd Street and Lenox Avenue. She finds a place on 35th and Lenox Avenue. I refused to leave Harlem then as I do now, and there was a place called Lenox Terrace, where we now live, that had so many vacancies.

''At that time 20 years ago, there weren't a whole lot of people who could afford not to live in Harlem, who were rushing to get into Harlem. Crime was really high. There were a lot of vacancies there, but they did have a doorman, and I felt since I was away from home so much that it might provide some security to my wife. In that house, people knowing that Alma would want to leave, there was a popular reverend, a pastor, and he, too, was leaving Harlem and was leaving an apartment that he had. I did not know and did not care that the apartment that he managed to get for us actually had been two apartments. He had it as one apartment. I got a lease for one apartment. I paid rent for one apartment. There's no way in the world I can imagine what it looked like when it was two apartments, and I don't care what the architect says. Under the law, that is one apartment.

''Ten years after I was in the apartment, my wife was notified by the landlord—incidentally, he was the one who was supposed to give me the gift. I wouldn't know what he looks like. I've never met him in my life or his agent, but he was saying that there was a studio apartment next to mine, and did I have any interest in it. They were really pushing apartments then. My wife says she didn't see any need for it.

''I said, 'Well, let's talk about this, Alma. You don't want my political friends to come here and talk in the living room. You get so tired of me doing my work, you know, while you're doing something else. You don't want any smoke in here. I can't have a card game here. Let's take a look at this one room apartment.'.

''I took it, and I can tell you that it saved my marriage. There's not a day when I'm home that I don't spend some time just sitting there. Sometimes it's reading. Sometimes it's studying. Sometimes the gang comes. Sometimes we raise a lot of devil. I pay the maximum rent for what cannot be described physically as any more than two apartments, but we can get two—the so-called fourth and third apartments.

''It's hard for me to admit to those of you who have a lot of political problems that, for most all of my political life in Congress, I've never picked up the phone to ask anybody to give me any money because I'd never really had any problems. I did have a guy in Washington that would give a fundraiser—one in Washington and one in New York—but it's kind of hard, when you're not challenged, to ask for money, but I guess it was my personality or my seniority on the Ways and Means Committee, one or the other. Somehow funds were coming in, so I hired somebody. We worked down at the political club. The money was coming in. He said he needed a little help. He thought that I should open up a headquarters. Well, I don't agree in spending a lot of money, but he said he'd heard that the Lenox Terrace, where I lived, had people living in apartments that were converted but that were not commercial for running McDonald's and other business.

''I said, 'Do what you want. We can afford to do it.'.

''They got this apartment. A staff of two became a staff of three, four and five, and I guess the Republican campaign committee can tell you how successful I've been.

''It reached the point where they said, 'Look, Congressman. We've got too many people. There's no air conditioning here. We need more space. Things are going well. You're sending out a lot of checks. We will not renew the lease.'. This is before what happened in the paper.

''I said, 'Do what you have to do.'.

''They spoke with the landlord and negotiated: an apartment with him for a larger staff, office accommodations in a place that was double the rent, much larger, right there in the Lenox Terrace, which means that everyone knew what they were doing and what other people were doing. We decided it would be best just to leave the Lenox Terrace in lieu of what happened because it was just too awkward.

''That ends, once and for all, the whole idea of a gift. I paid the maximum rent. If I'd decided that because I wanted to please somebody that I should look for a marketplace rent, I would not know where to go, but I sure am not going to give the landlord what I think is a higher rent because I want to please somebody as to what is market rent, but if I'd left the apartment because of some foolish, stupid reason, the landlord would've come in, slapped some paint on it and doubled the rent. So, therefore, it would not be of any assistance to somebody of a lesser income.

''Whatever doubts you may have, which I don't see how—I told somebody show me the gift, and I'll walk away. Leave it to the bipartisan Ethics Committee to decide. It's not only the right

and fair thing do. It's the only thing to do.

''The last point gives me a little more difficulty. They are saying that I may have used my stationery to solicit funds for the City College of New York for an institution that the board of trustees has named the Charles Rangel Public School for Public Service.

''I have to let you know that, on November 30, 1950, I was shot and left for dead in Korea, and I came home in '52. I had more medals, more self-esteem than any guy 22 years old should have. The only time it was shattered is when I went for a job and found out that nobody wanted heroes, that nobody wanted infantry men and that nobody wanted the expertise that I enjoyed in directing fire on the enemy to 18 155-millimeter Howitzers at 75 shell bombs on the enemy. So, it was clear that I not only was unemployed but that I was unemployable. It was clear in one day when I had my truck full of stuff on the street in the Garment Center that I joined the Army to avoid. The rain came; the boxes were scattered all over, and the policeman was cursing me out for blocking traffic. Sergeant RANGEL was being cursed out on a public street.

''I dropped everything. I went to the VA, and I said, 'I need some help.'. They told me that because I had to go back to high school that I couldn't go to college. I raised so much hell. Finally, because of the GI Bill—I was a high school dropout—I got the training to become a Member of Congress, a member of the Ways and Means Committee and become its chairman.

''Am I overzealous about education? You bet your life. Do I go everywhere and tell businesspeople that you owe it to this country to assist us in making certain that Americans can produce, that we shouldn't be embarrassed of having to import people here who have knowledge in science and all of that? I want America to be as strong as it can be, and I'm going to do everything legally, morally and ethically possible to make certain that we support our young people and expose them to education.

''This CCNY, this City College of New York, has excelled. Colin Powell and so many people had dreams and have succeeded. All I was saying is that we have thousands of Barack Obamas in the Black community. We have so few who are willing to get involved in public service. They go to Wall Street. They make their money and they're bright. What I want to do is to encourage minorities and be able to say, 'Hey, you don't have to run for public office, but please understand the importance of public service.'. They said, 'There should be a school for you to do that.'. I said, 'Well, let's get a school. Let's do it.'. They said, 'Let's do it.'.

''Two, three days ago, I heard Secretary Rice talking to some group, and she was saying that she goes to so many countries and that she doesn't see people in the Foreign Service who look like her. Those who look like the gorgeous mosaic of America is not abroad. But she said, 'Thanks to Congressman RANGEL, we have worked out a program where we go to the historically Black colleges where we train these people there. When they graduate, they not only have degrees, but they are members of the Foreign Service, and they learn to understand the great contribution they can make to this country.'. That was what I wanted to do.

''I made certain that, in this letter, I did not ask for any public funds or for any kind of funds at all, but they said, because they knew that the reason I wanted these not-for-profit people, these private people, to take a look and see whether they could support this not-for-profit public college, there may have been some stretch in the line because it was on stationery. Had I not had the seal that had the Capitol, it would have been all right.

''I'm glad this happened because I'm going to find some way to do what I do, and I'm going to do it the way the Ethics Committee says to do it, but I hope I can get some of you to encourage the private sector to do what our government is not doing. Education is too important to leave to the local and State schools. Corporations have an obligations to help us to educate our people. Condoleezza Rice said it, and I truly know that you believe a failure to educate our young people is a threat to our national security. If for whatever reason the Federal Government is not doing it, everyone ought to do their bit. So, whatever the Ethics Committee says to do, we have to do.

''Finally, I've changed my mind in bringing to your attention how they beat up on Mr. BOEHNER on the Tim Russert show: where he's been, how he got there and what he violated. At the end of the day, I think I'm trying to make certain that my presentation ends up on as positive a note as I can because of my longtime respect for my friend. Mr. BOEHNER said it was a big mistake and I regret it. I shouldn't have done it. It was an old practice in the House that had gone on for a long time. Well, I think he knows what I'm talking about.

''If you made a mistake, I may have made a mistake.

''I'll tell you one thing. The judgment of our mistakes should not be to attack each other. It should not be to defame us in front of our family and friends. Whatever difference that we had with each other, that's why we have the Ethics Committee. So, at the end of the day, that's how it's going to be resolved. We don't have that many issues that we've got to work with, perhaps, in a bipartisan way. Whatever we have to do because of the election we have to do, and I don't expect this short talk is going to change anything, but I do hope there is one thing that we keep in mind: that for those of us who are going to be here next year with a new administration, the last thing we have to do is to threaten each other politically and destroy the friendships and the camaraderie that we have worked so hard to try to restore.

''I conclude by letting you know that some of you old-timers may know a guy named Guy Vander Jagt. Guy Vander Jagt was chairperson of the Republican Campaign Committee. Could he speak? Could he raise money? Was he partisan? Guy Vander Jagt was my friend. Guy Vander Jagt would come to my fund-raisers. I would stop over to his. His wife and my wife are the best of friends. Even though Guy Vander Jagt is gone, they asked me to speak in the Congress to say how he was loved by both sides. Was he a good Republican? Was he fierce? Was he eloquent? Was he liked? Yes.

''I don't think I'll live long enough to see the days when we'll have that type of relationship. The little we do have let's not destroy. We have a big responsibility to our Nation and to this Congress. I know in my heart that my friend John BOEHNER does not mean truly what he has said, and whoever has put him in the position where he felt that he had to say it, hey, it's campaign time. I understand it. It has to stop somewhere before we leave here. I hope it can stop now.''.

POINT OF ORDER

(¶102.13)

PURSUANT TO SECTION 426(B)(4) OF THE CONGRESSIONAL BUDGET ACT OF 1974, A MEMBER WHO MAKES A POINT OF ORDER UNDER SECTION 426(A) OF THE ACT AND SATISFIES THE THRESHOLD BURDEN SPECIFIED IN SECTION 426(B)(2) OF THE ACT BY CITING LANGUAGE IN THE RESOLUTION THAT WAIVES THE APPLICATION OF SECTION 425 OF THE ACT IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

PURSUANT TO SECTION 426(B)(3) OF THE CONGRESSIONAL BUDGET ACT OF 1974, AS DISPOSITION OF A POINT OF ORDER RAISED UNDER SECTION 426(A) OF THE ACT, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE PROPOSITION THAT IS THE OBJECT OF THE POINT OF ORDER.

On September 16, 2008, Mr. CANTOR made a point of order against the consideration of the resolution and said:

''Mr. Speaker, I make a point of order against consideration of the resolution because it is in violation of section 426(a) of the Congressional Budget Act. The resolution provides that all points of order against consideration of the bill are waived except those arising under clause 9 and 10 of rule XXI. This waiver of all points of order includes a waiver of section 425 of the Congressional Budget Act, which causes the resolution to be in violation of section 426(a).''.

The SPEAKER pro tempore, Mr. PASTOR, responded to the point of order, and said:

''The gentleman from Virginia [Mr. CANTOR] makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

''The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

''After that debate, the Chair will put the question of consideration, to wit: 'Will the House now consider the resolution?'.''

Mr. CANTOR was further recognized and said:

''Mr. Speaker, last night, the Committee on Ways and Means certified that the underlying legislation contained no earmarks, and under the rules there is no other way to challenge that certification, which is one of the reasons why I stand before you today.

''Provisions in H.R. 6899 calling for the restructuring of the New York Liberty Bonds is clearly an earmark. This earmark is worth $1.2 billion and stands to benefit one entity, which is New York City.

''I have a letter, Mr. Speaker, dated October 30, 2007, from the chief of staff of the Joint Committee on Taxation in which he determines that the New York Liberty Zone tax incentives is a limited tax benefit and therefore an earmark. Furthermore, Mr. Speaker, according to House rule XXI, clause 9, and the Honest Leadership and Open Government Act of 2007, this earmark should have been disclosed along with the Member that requested the same.

''From all reports, Mr. Speaker, instead of going through the proper procedure, disclosing that this was going to be included in the bill, this provision was air-dropped into the bill over the weekend at the last minute without any ability for any of the Members to know that this was in the bill.

''Reports say that it is the chairman of the Ways and Means Committee, Representative RANGEL, that has requested this earmark. Yet how are we to know whether Chairman RANGEL is the sponsor of this earmark, since there has been no transparency and no notification as required under the rule?

''Furthermore, Mr. Speaker, this earmark produces no energy for American families, and the way that the majority plans to pay for this earmark is by raising taxes on job creation as well as energy production.

''Mr. Speaker, we are going to hear a lot today during the debate about revenue sharing and the fact that many coastal States, including my State of Virginia, will not be able to share in any of the revenues resulting from energy exploration off our coast. In light of this, in light of the fact that there is no incentive whatsoever to produce energy in this bill, in light of that, when we see that the majority is channeling $1.2 billion to New York City for an earmark for a project that only benefits that locality, I think that we understand now what the intent of the majority is in bringing the bill to the floor in this form.

''There is zero relationship between increasing American energy production and this earmark, Mr. Speaker, which again underlies my objection and is one of the reasons why I raise this point of order.''.

Ms. SLAUGHTER was recognized to speak to the point of order and said:

''Mr. Speaker, the point of order is about whether to consider the rule and ultimately the Comprehensive American Energy Security and Consumer Protection Act. In fact, I would say this is simply an effort to kill the bill.

''In the midst of the energy crisis, the bill takes important steps towards increasing domestic energy production, encouraging the development of alternative fuels and cutting down on the corruption between the Bush administration regulators and the oil industry.

''By expanding access to offshore oil reserves, the bill encourages oil exploration and could lead to increased domestic energy production.

''By releasing oil from the Strategic Petroleum Reserve, the bill will lead quickly to reducing prices at the pump.

''In light of an Inspector General report showing that Minerals Management Service employees were accepting gifts from the oil companies they regulate, engaging in unethical sexual and drug conduct, this bill would subject the MMS employees to higher ethical standards and make it a Federal offense for oil companies to provide gifts for MMS employees.

''By promoting energy efficiency and conservation in buildings, through updated building codes and incentives for energy-efficient construction, this bill will lead to reduced energy use and lower utility bills. At the same time, by providing more funding for home heating assistance, we ensure that seniors and other vulnerable populations will not have to choose between food and heating oil.

''By providing incentives and support for development and deployment of domestic alternative energy technologies, the bill will promote energy security for the United States. Under this bill, power companies would be required to generate 15 percent of their electricity from renewable sources by 2020, reducing air pollution from power plants and helping to address the threat of climate change.

''As Americans use more public transportation in the face of high gas prices, this bill will help transit agencies deal with added costs and increased ridership by providing $1.7 billion in grants. At a time of record-breaking oil company profits, the bill will require the oil companies to pay their fair share by repealing tax subsidies that they certainly don't need, and by closing a royalty loophole in lease agreements from 1998 and 1999.

''In short, the bill is a much-needed compromise approach to a widespread crisis facing our country. This is simply a case today whether we support, with our votes, the oil companies or the consumers and the citizens of the United States.

''I urge my colleagues to vote 'yes'.''.

Mr. CANTOR was further recognized and said:

''Mr. Speaker, I would say in all respect to my colleague from New York, I still don't understand how the insertion of this earmark, this insertion of $1.2 billion, has anything whatsoever to do with this bill, has anything whatsoever to do with increasing American energy production, which is the purpose of this bill, which is the majority's stated purpose, that we want to increase American energy production.

''But, instead, what the gentlelady talks about, again, is not at all responsive to what it was that I was raising. We don't have to have a vote on this issue if the gentlelady would accept unanimous consent to remove the earmark from the bill to go forward.

''Again, why are we having this earmark, this $1.2 billion earmark? This is exactly what the American public is so upset with Congress about, the fact that we have a bill that is designed to increase American energy production to help us try and wean off of the incredible reliance that we have on foreign oil. Why? The public has to be asking why in the world would we be inserting $1.2 billion in directed funds to one locality. Why in the world would we be doing that?

''It does not make any sense. The fact that the Ways and Means Committee has certified that this is not an earmark, to me, flies in the face of the open and honest way that the majority has said they would run this House.

''Again, I have a letter from the chief of staff from the Committee on Joint Tax which says that the New York City Liberty Bonds and the provisions calling for their restructuring is an earmark. Again, I say to the majority, if we are going to be straightforward in our desire to solve the problem of American energy production, this earmark has no place in the bill.''.

Mr. CROWLEY was recognized to speak to the point of order and said:

''Mr. Speaker, I have often wondered what the capacity for remembering my colleagues on the other side of the aisle have. Apparently, it extends no further than 7 years and 5 days. Seven years and 5 days ago, my city, the City of New York, was attacked on 9/11. Have you forgotten that?

''For the purposes of your point of order in opposition to this bill coming to the floor, it's the lack of someone taking responsibility for the $1.2 billion that you call an earmark. It's Crowley, C-r-o-w-l-e-y. It's the U.S. Congress that did this 7 years ago, after our country was attacked on 9/11, 7 years and 5 days ago.

''I, 5 days ago, stood out on the steps of the Capitol and sang 'God Bless America' with both my colleagues from the Republican side of the aisle and this side of the aisle. What we are doing today is simply fulfilling a promise, a promise.

''This is not an earmark. This is already law. We are adapting it, we are changing it so New York can use the money. But I need to remind my colleagues on this side of the aisle, there is still a 16½ or 17-acre hole in lower

Manhattan. We need to do all we can to help rebuild that, rebuild the economy of New York.

''I daresay my colleagues from New York on the other side of the aisle, they are opposed to this point of order. They will oppose your position on this point of order, because they know this is not an earmark.

''They know this is going to help rebuild New York. It's a promise that was made by the administration. The President does not call it an earmark. It is in the President's budget.

''I would also object to what my friend, the colleague from Virginia, said about the chief of staff on the Joint Tax Committee. Ed Kleinbard, on May 15 of this year, stated that on the issue of limited tax benefits, the answer is that this is a matter wholly within the prerogative of the chairman. He alone decides this issue.

''Mr. RANGEL does not call it an earmark; I don't call it an earmark. I daresay, many of your colleagues on your side of the aisle do not call it an earmark. This is not an earmark. This is to help New York City rebuild after 9/11.

''With all that's going on, as we read in the papers today about the markets, New York City is under tremendous duress. Don't add to that. Don't add to that today by bringing up this type of tactic to limit the ability of New York City to rebuild itself.''.

Mr. CANTOR was further recognized and said:

''Mr. Speaker, I would like to insert the letter I quoted from in the RECORD.

MEMORANDUM

To: Bill Dauster, Deputy Chief of Staff, Senate Finance Committee.

From: Ed Kleinbard.

Date: October 30, 2007.

Subject: ApplicationV Senate Rule XLIV (relating to limited tax benefits) to sec. 301 of the American Infrastructure Investment Improvement Act of 2007 (as passed by the Senate Finance Committee on September 21, 2007).

Request

You have requested that the staff of the Joint Committee on Taxation analyze the application of Senate Rule XLIV's limited tax benefit provision to section 301 of the American Infrastructure Investment and Improvement Act of 2007 (''Section 301''), as passed by the Senate Finance Committee (relating to the restructuring of New York Liberty Zone tax incentives). I offer this analysis at your request to assist Chairman Baucus in making his determination of this issue, as contemplated by Rule XLIV.

Senate Rule XLIV

Section 521 of the Honest Leadership and Open Government Act of 2007 (the ''HLOGA'') provides for ''earmark'' reform. Specifically, HLOGA adds a new Rule XLIV to the Standing Rules of the Senate. Under this rule, ''it shall not be in order to vote on a motion to proceed to consider a bill or joint resolution reported by any committee unless the chairman of the committee of jurisdiction, or majority leader or his or her designee certifies: (1) that each congressionally directed spending item, limited tax benefit, and limited tariff benefit, if any, in the bill or joint resolution, or the committee report accompanying the bill or joint resolution, has been identified through lists, charts, or other similar means including the name of each senator who submitted the request to the committee; and (2) that the information in clause (1) has been available on a publicly accessible congressional website in a searchable format at least 48 hours before such vote''. Failure to satisfy this requirement makes a bill or joint resolution subject to a point of order until these requirements are satisfied under the rule.

For purposes of the rule, the following definitions apply.

A congressionally directed spending item ''means a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.''

A limited tax benefit ''means any revenue provision that (A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.''

A limited tariff benefit ''means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.''

Senate Floor Statement

A colloquy between Senators Baucus, Durbin, and Grassley provides some guidance regarding how the new rule will be applied in the case of limited tax benefits. In relevant part the colloquy states:

For more guidance, we also recommend the interpretative guidelines developed by the staff of the Joint Committee on Taxation in response to the prior-law line item veto. These guidelines may also be applicable to the interpretation of the proposed earmark disclosure rules for limited tax benefits in this bill. The Joint Committee on Taxation documents are called, first, the ''Draft Analysis of Issues and Procedures for Implementation of Provisions Contained in the Line Item Veto Act, Public Law 104–130, relating to Limited Tax Benefits,'' that's Joint Committee on Taxation document number JCX–48–96, and second, the ''Analysis of Provisions Contained in the Line Item Veto Act, Public Law 104–130, relating to Limited Tax Benefits,'' that's Joint Committee on Taxation document number JCS-1-97.

The proposed rule in this bill would require the disclosure of limited tax benefits. It would define a limited tax benefit to mean any revenue provision that, first, provides a Federal tax deduction, credit exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and second, contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.

The proposed rule would apply in most cases where the number of beneficiaries is 10 or fewer for a particular tax benefit. But the Finance Committee will not be bound by an arbitrary numerical limit such as ''10 or fewer.'' Rather, we will apply the standard appropriately within the unique circumstances of each proposal. For example, if a proposal gave a tax benefit directed only to each of the 11 head football coaches in the Big Ten Conference, we may conclude that the rule would nonetheless require disclosure of this benefit, even though the number of beneficiaries would be more than 10.

We will not limit the application of the proposed rule to proposals that result in a reduction in Federal receipts relative to the applicable present-law baseline. We believe that the proposed rule would have application to limited tax benefits that provide a tax cut relative to present law for certain beneficiaries, like, for example, a tax rate reduction for certain beneficiaries. But we also believe that the rule would apply to limited tax benefits that provide a temporary or permanent tax benefit relative to a tax increase provided in the proposal, like, for example, exempting a limited group of beneficiaries from an otherwise applicable across-the-board tax rate increase.

For example, a new tax credit for any National Basketball Association players who scored 100 points or more in a single game would be covered by the rule. And the rule would also cover a new income tax surtax on players in the National Hockey League that exempted from the new income surtax any players who were exempted from the league's requirement that players wear helmets when on the ice.

The rule defines a beneficiary as a taxpayer; that is, a person liable for the payment of tax, who is entitled to the deduction, credit, exclusion, or preference. Beneficiaries include entities that are liable for payroll tax, excise tax, and the tax on unrelated business income on certain activities.

The rule does not define a beneficiary as the person bearing the economic incidence of the tax. For example, in some instances, a taxpayer may pass the economic incidence of a tax liability or tax benefit to that taxpayer's customers or shareholders. The proposed rule would look to the number of taxpayers. That number is easier to identify than the number of persons who might bear the incidence of the tax.

In determining the number of beneficiaries of a tax benefit, we will use rules similar to those used in the prior-law line item veto legislation. For example, we will treat a related group of corporations as one beneficiary for these purposes. Without such a rule, a parent corporation could avoid application of the disclosure rule by simply creating a sufficient number of subsidiary corporations to avoid classification as a limited tax benefit under the proposed rule.

For example, if a related group of corporations—like parent-subsidiary corporations or brother-sister corporations—owns a football team, then the related group will be considered one beneficiary. That treatment is analogous to the team being one entity, not separate entities, like the coaching staff, offensive unit, defensive unit, specialty unit, and practice squad.

The time period that we will use for measuring the existence of a limited tax benefit will be the same time period that is used for Budget Act purposes. That is the current fiscal year and 10 succeeding fiscal years. Those are also all the fiscal years for which the Joint Committee on Taxation staff regularly provide a revenue estimate.

For purposes of determining whether eligibility criteria are uniform in application with respect to potential beneficiaries of such a proposal, we will need to determine the class of potential beneficiaries. In the case of a closed class of beneficiaries—for example, all individuals who hit at least 755 career home-runs before July 2007—that class is not subject to interpretation, since only Henry Aaron satisfies this criteria. If, instead, the defined class of beneficiaries is all individuals who hit at least 755 career home-runs, then we will determine the class of potential beneficiaries by assessing the likelihood that others will join that class over the time period for measuring the existence of a limited tax benefit.

Whether the eligibility criteria are not uniform in application with respect to poten-

tial beneficiaries will be a factual determination. To continue with the previous hypothetical, a proposal that provides a tax benefit to all individuals who hit at least 755 career home-runs may still not require disclosure if it is uniform in application. If the same proposal is altered so as to exclude otherwise eligible career home-run hitters who played for the Pittsburgh Pirates at some point in their career, then that kind of a limited tax benefit would require disclosure under the proposed rule.

Some of the guidelines in the Joint Taxation Committee's reports numbered JCX–48–96 and JCS–1–97 would not be directly applicable, but may be helpful in determining the class of potential beneficiaries. For example, the same industry, same activity, and same property rules might provide useful analysis.

Provision to restructure the New York Liberty Zone tax incentives

In addition to repealing certain depreciation and expensing provisions previously available in the New York Liberty Zone (the ''NYLZ''), Section 301 provides a Federal credit against the tax imposed for any payroll period by Code section 3402 (related to withholding for wages paid) for which a NYLZ governmental unit is liable under Code section 3403. NYLZ governmental units are defined as the State of New York, the City of New York, or any agency or instrumentality of the first two.

The credit may be claimed during the 12-year period beginning on January 1, 2008 and is equal to certain amounts expended by the governmental units on a qualifying project. A qualifying project is any transportation infrastructure project in or connecting with the NYLZ that is designated by the Governor of the State of New York and the Mayor of the City of New York as a qualifying project. The Governor of the State of New York and the Mayor of the City of New York are to allocate to the New York Liberty Zone governmental units their portion of the qualifying expenditure amount for purposes of claiming the credit. The provision is effective on the date of enactment.

Congressionally Directed Spending Item or Limited Tax Benefit

The threshold question is whether Section 301 should be analyzed as a ''congressionally directed spending item'' or as a ''limited tax benefit,'' because Rule XLIV treats the two somewhat differently. It can be argued that Section 301 essentially constitutes a ''congressionally directed spending item,'' and therefore that the limited tax benefit analysis is irrelevant. The reasoning supporting this reading is that in the ordinary course, Federal withholdings on employee wages are effectively assets of the U.S. Treasury, and the tax credit made available by Section 301 may be claimed (and withholdings on wages therefore retained rather than being transmitted to the U.S. Treasury) only to the extent that the employer/governmental unit in question incurs expenditures for specifically identified projects.

Section 301 unquestionably has the economic effect of an appropriation: money otherwise due the U.S. Treasury will, by virtue of this provision, effectively fund (in light of the fungibility of money) a specific expenditure. Nonetheless, this memorandum proceeds upon the assumption that Section 301 is a ''tax benefit'' and not a ''spending item.'' We believe that this is an area where legal form, not economic substance, controls. Accordingly, we are of the view that an amendment to the Internal Revenue Code that has an outlay effect is not by virtue of that fact alone a spending item. For example, we believe that the refundable portions of the child tax credit and earned income credit should be considered tax benefits for these purposes, notwithstanding the fact that these provisions have substantial outlay effects.

Our mode of analysis is dictated by practical necessity: virtually every ''tax expenditure'' could equally well have been implemented by Congress as an appropriation. We take comfort as well in the observation made in the colloquy quoted above that, for purposes of Rule XLIV, the ''beneficiary'' of a limited tax benefit is determined by looking to the formal imposition of tax liability (i.e., by determining who is the relevant ''taxpayer''), not to the party bearing the economic incidence of the tax. The colloquy makes clear that the reason for doing so is one solely of administrative convenience (''The proposed rule would look to the number of taxpayers. That number is easier to identify than the number of persons who might bear the [economic] incidence of the tax.'')

In this case, Section 301 is structured as a tax credit made available under the Internal Revenue Code to certain employers against their otherwise-existing obligation to remit employee withholdings to the U.S. Treasury. In light of our traditional analysis summarized above, we therefore think it appropriate to proceed on the basis that Section 301 should be analyzed under the ''limited tax benefit'' leg of Rule XLIV.

Limited Group of Current Beneficiaries

A second issue is whether Section 301 currently benefits a limited group of beneficiaries. Applying by analogy the colloquy's reference to treating a related group of corporations as one taxpayer, we believe that the agencies and instrumentalities of New York State and City should be treated as at most two taxpayers for purposes of whether a limited group of beneficiaries is affected by the provision. Accordingly, we believe that the statutory incidence of the provision falls on fewer than 10 beneficiaries (i.e., the State of New York, the City of New York and agencies or instrumentalities of the State or City). The economic incidence of the provision is not determinative for these purposes.

Uniform Application to Potential Beneficiaries

Under Rule XLIV, a tax provision that in practice applies only to a limited number of current beneficiaries nonetheless is not a ''limited tax benefit'' unless in addition that provision's ''eligibility criteria are not uniform in application with respect to the potential beneficiaries of the provision.'' (Emphasis supplied.) The only direct indication of what constitutes the ''uniform application'' of a taxing statute to potential beneficiaries is the colloquy described above. In this regard, the colloquy indicates that a tax benefit that applies equally to current and potential future beneficiaries will not constitute a limited tax benefit, just because the number of identifiable beneficiaries today is fewer than 10.

We suggest that the most logical way to read Rule XLIV that is consistent with its obvious intended scope and with the colloquy is to conclude that Rule XLIV applies a two-step analysis towards ''potential'' beneficiaries. First, a sponsor of a Bill that has a limited number of current beneficiaries can rely on the existence of a sufficiently large class of reasonably-likely potential beneficiaries to demonstrate that the Bill applies to more than a limited number of taxpayers. In that case, however, Rule XLIV goes on to provide that the statute must be applied uniformly to them and to currently-known beneficiaries. This reading finds direct support in the fact that Rule XLIV's ''uniform application'' clause applies only with respect to ''potential beneficiaries'' of a statute.

In other words, a Bill that has a large number of current beneficiaries is not a limited tax benefit provision, because by definition it does not apply to a limited number of taxpayers, without regard to whether future (''potential'') taxpayers are treated differently from current ones. If, however, a Bill today applies only to a limited number of beneficiaries, then the Bill's sponsor cannot rely on a sufficient number of ''potential'' beneficiaries emerging in the future to avoid the application of the limited tax benefit rule unless the statute would treat all current and potential beneficiaries equally.

Under this reading, a statute that has no possible future (''potential'') beneficiaries and that applies today to a limited number of current beneficiaries must be a limited tax benefit. It cannot be the case, for example, that a rule identifying a class of taxpayers comprising only Hank Aaron nonetheless is not a limited tax benefit, on the theory that all those taxpayers (a single individual) are treated equally.

Following this mode of analysis, the most important analytical step in applying Rule XLIV to a case (like this) where a statute's current beneficiaries are limited in number is to determine the relevant class of potential (i.e., future) beneficiaries. The colloquy concludes that a statute's class of potential beneficiaries is to be determined ''by assessing the likelihood'' that beneficiaries beyond those to whom the benefit applies today may appear at a later date.

Thus, to continue with the colloquy's baseball analogy, a permanent tax benefit made available on a uniform basis to all individuals who hit a least 755 major league career home-runs is probably not a limited tax benefit (because the number of individuals who could qualify in the future is unlimited), but a comparable temporary provision expiring December 31, 2008, probably does constitute a limited tax benefit, because the class of individuals who could reasonably be expected to satisfy that test would come down to two identifiable individuals.

Having identified the class of potential beneficiaries, and having determined that they are sufficiently numerous as to overcome the ''limited'' nature of the tax benefit in question, the final step in the analysis is to ensure that the statute will apply uniformly to all potential and current beneficiaries. In most cases, this determination will be straightforward.

In sum, we acknowledge that the ''uniform application'' test is both vague and difficult to apply. The ''uniform application'' leg of the analysis should not be read, however, to undercut the entire purpose of Rule XLIV. If the only taxpayers that can reasonably be expected to satisfy a bill's definition of the class of beneficiaries of a tax benefit are both few in number and known to the Senator proposing the Bill at the time that the legislation is considered, then in our view that Bill must give rise to a Rule XLIV issue. Any other reading would vitiate the Rule of any meaning.

This mode of analysis leads to a straightforward resolution of the present case. In practice, only New York State and New York City (and political subdivisions thereof) can be expected to qualify for the benefits of Section 301. The fact that these two identifiable beneficiaries are treated equally is not enough, in our view, to avoid the reach of Rule XLIV.

Conclusion

While we recognize that colorable arguments can be made in support of the contrary conclusion, we believe that Rule XLIV's disclosure requirement for limited tax benefits is applicable to Section 301.

I would be pleased to discuss this issue further with you, should you wish. In any event, I hope that this memorandum is helpful to the Chairman's decision-making process.

''Mr. Speaker, I would also remind my good friend from New York that

Virginia, too, was attacked on 9/11. So it is not that any of us forget 9/11, but we all, in this House, still mourn the loss of the lives in New York, Pennsylvania and Virginia.

''I would say to the gentleman, that's not the issue here. The issue here is about an air-dropped earmark that benefits one entity, one locality, New York City, that is reported to be requested by one Member, and that is Chairman RANGEL.

''Again, I say to the gentleman, no one, no one denies the fact that this country is struggling, still struggling post 9/11. Yes, we saw the news in the markets yesterday.

''Yes, I understand the gentleman represents New York City, the financial capital of the world, and is very concerned about its well-being, as we all are. But, again, I would make the point that this is not the subject of my objection.''.

Mr. CROWLEY was further recognized and said:

''Would the gentleman agree that the President has included this in his budget for this fiscal year?''.

Mr. CANTOR was further recognized and said:

''If the gentleman says so.

''But, again, reclaiming my time, I am not opining and standing up on the substance of what is behind the request for the Liberty Bonds.

''What I am objecting to is the fact that this, the insertion of this item, is so far beyond the jurisdiction of a bill designed to promote American energy production that it just doesn't even pass the straight-faced test.''.

Mr. MARKEY was recognized to speak to the point of order and said:

''Mr. Speaker, this is all part of an ongoing effort by the Republicans to change the subject, to have a drilling distraction, anything to get away from what their true agenda is.

''This is something that should be opposed. What the Republicans are trying to do here should be opposed, because what this is really all about, and what they are trying to do now, is to avoid the real debate on the fact that this is a comprehensive energy plan that has been brought to the House floor, that this bill deals with renewables. It deals with conservation. It deals with all of these issues that we need to deal with.

''We will see if they mean it when they say they want a comprehensive energy plan, because that's what we are going to be debating today, or have they been simply playing politics, which is what this motion is all about. It's intended to avoid the real debate.

''We are going to see a lot of crocodile tears here, shed on the Republican side here, after 12 years of controlling the energy committees, after 8 years of having George Bush and DICK CHENEY in the White House, after the Department of Energy under Republican control, the crocodile tears are flowing with regard to all of their concern about our energy dependence.

''That's what this point of order is all about. It's just another distraction, another attempt to get away from the fact that on renewable, on conservation, on efficiency they did almost nothing. It's almost 12 years that they controlled the United States Congress, until last year, in conjunction with the Bush-Cheney secret energy plan.

''The Republicans say they want all of the above, but have they here produced a bill which is truly comprehensive?

''No, they have not.

''Because their plan is not all of the above. The Republican leadership, the White House, and Big Oil is really concerned with all that's below, not all of the above, all that's below. Our beaches, 3 miles offshore, all of the oil that's below our national parks, all the oil that's below our most pristine wilderness areas, that's what they are in favor of.

''Not all of the above, all that's below. They had 12 years controlling this institution to do something about all of the above, wind, solar, geothermal, efficiency. They did nothing.

''All of this is just another attempt to get off the point, to have a distraction, which is why we should reject this point of order. America needs an oil change.

''All right, we will permit some more drilling, but you also have to have a strategy for the future. They keep saying on the Republican side, drill, baby, drill.

''What we are saying is change, baby, change. They can't change. They are still out here with the Big Oil agenda. They are still out here saying no to wind, no to solar, no to efficiency, no to geothermal, no to the future.

''Innovate, baby, innovate. Change, baby, change. That's what this debate is all about, and that's what they are trying to do. They are trying to change the subject. They are trying to distract from the fact that they are interested in more drilling, but not a comprehensive energy plan for our country.

''That's why it's great that we are having this debate. Because we see, once again, what they did for 12 years, distract the American public, allow ourselves to become more dependent on imported oil and then come out and try to wash their hands of their responsibilities. Vote 'aye.' Vote for change.''.

Mr. FLAKE was recognized to speak to the point of order and said:

''Mr. Speaker, I guess that some on the majority side think that they can cover up just by yelling or by raising the volume here of debate.

''The bottom line here is, and the reason for this point of order, is that the majority party thought that, all right, we can have a bill here, or we can sneak something in. Let's sneak a limited tax benefit for New York.

''You can call it an earmark, that's the proper definition when you have a limited tax benefit. You can call it a banana. You can call it anything you want to. The bottom line is the majority tried to sneak something into a broader bill that's supposed to be about energy, and that's what this is about.

''So nobody is trying to distract anybody, other than those who are trying to slip a provision in that doesn't have to do with any comprehensive energy plan. It has to do with New York.

''You can raise your voice, and you can yell all you want. The bottom line is somebody tried to sneak a limited tax benefit into this legislation. That's why I support the point of order.''.

Mr. CANTOR was further recognized and said:

''Mr. Speaker, all I would say is the histrionics that we have already seen on the majority side of the aisle indicate the sensitivity of the matter of earmarks.

''We, I think, all have noticed that the public has an increasing awareness of the way that this body operates, and they have a great dissatisfaction aimed towards this process. That's why we raise this issue. It is just completely unfair. It smacks of a smoke-filled room, behind-closed-doors dealings that is not befitting of this institution.

''Frankly, it is not what the American people want, nor what they deserve.

''That is the reason for raising this question surrounding the $1.2 billion that has been requested by what reports have said was Chairman RANGEL of the Ways and Means Committee.

''Again, on their own, liberty bonds should stand a test of this House; but it should not be a provision inserted in a bill that is meant to increase American energy production so that we can bring down gas prices.''.

Mr. CROWLEY was further recognized and said:

''Mr. Speaker, let me just remind my colleague regarding accusations as to who is responsible for this particular piece of legislation being added to this bill. Initially this was air-dropped into the overall bill to help New York recover after 9/11 by Chairman Thomas. So I guess to some degree Chairman Thomas is responsible for this particular provision being here today, without consultation with not only the ranking member, Charlie RANGEL at the time, or Mike MCNULTY from New York State. Even his own colleague from the Republican side of the aisle, Amo Houghton at the time who was a Member, was not consulted about the addition of this into the legislation.''.

After debate,

The question being put, viva voce,

Will the House now consider the resolution?

The SPEAKER pro tempore, Mr. PASTOR, announced that the nays had it.

Ms. SLAUGHTER demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 230 Nays 180

¶102.14 [Roll No. 593]

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

PRIVILEGES OF THE HOUSE

(¶104.12)

A RESOLUTION ALLEGING THAT A MEMBER RECEIVED CAMPAIGN CONTRIBUTIONS IN VIOLATION OF LAW AND GIFTS IN VIOLATION OF HOUSE RULES, AND FAILED TO PAY INCOME TAX IN VIOLATION OF FEDERAL LAW, DIRECTING THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO INVESTIGATE HIM, AND, REMOVING HIM AS CHAIRMAN OF A STANDING COMMITTEE PENDING SUCH INVESTIGATION, PRESENTS A QUESTION OF THE PRIVILEGES OF THE HOUSE UNDER RULE IX.

THE HOUSE LAID ON THE TABLE A RESOLUTION CONSIDERED AS A QUESTION OF THE PRIVILEGES OF THE HOUSE.

On September 18, 2008, Mr. BOEHNER rose to a question of the privileges of the House and submitted the following resolution (H. Res. 1460):

Whereas the Committee on Ways and Means has jurisdiction over the United States Tax Code;

Whereas The New York Times reported on September 5, 2008, that, ''Representative Charles B. Rangel has earned more than $75,000 in rental income from a villa he has owned in the Dominican Republic since 1988, but never reported it on his federal or state tax returns, according to a lawyer for the congressman and documents from the resort'';

Whereas in an article in the September 5, 2008 edition of The New York Times, his attorney confirmed that Representative Rangel's annual congressional Financial Disclosure statements failed to disclose the rental income from his resort villa;

Whereas The New York Times reported on September 6, 2008 that, ''Representative Charles B. Rangel paid no interest for more than a decade on a mortgage extended to him to buy a villa at a beachfront resort in the Dominican Republic, according to Mr. Rangel's lawyer and records from the resort. The loan, which was extended to Mr. Rangel in 1988, was originally to be paid back over seven years at a rate of 10.5 percent. But within two years, interest on the loan was waived for Mr. Rangel.'';

Whereas clause 5(a)(2)(A) of Rule 25 of the Rules of the House defines a gift as, ''. . . a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value'' and prohibits the acceptance of such gifts except in limited circumstances;

Whereas Representative Rangel's acceptance of thousands of dollars in interest forgiveness is a violation of the House gift ban;

Whereas Representative Rangel's failure to disclose the aforementioned gifts and income on his Personal Financial Disclosure Statements violates House rules and federal law;

Whereas Roll Call newspaper reported on September 15, 2008 that, ''The inconsistent reports are among myriad errors, discrepancies and unexplained entries on Rangel's personal disclosure forms over the past eight years that make it almost impossible to get a clear picture of the Ways and Means chairman's financial dealings.'';

Whereas Representative Rangel's failure to report the aforementioned gifts and income on Federal, State and local tax returns is a violation of the tax laws of those jurisdictions;

Whereas disclosure of these improper acts follows an announcement on July 31, 2008 by the House Committee on Standards of Official Conduct that it is reviewing unrelated allegations that Representative Rangel has violated House gift rules, financial disclosure regulations and rules barring the use of official resources to solicit funds for private ventures;

Whereas an editorial in The New York Times on September 15, 2008 stated, ''Mounting embarrassment for taxpayers and Congress makes it imperative that Representative Charles Rangel step aside as chairman of the Ways and Means Committee while his ethical problems are investigated.'';

Whereas clause 1 of rule XXXIII of the Rules of the House of Representatives provides, ''A Member, Delegate, Resident Commission, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House'';

Whereas on May 24, 2006, Speaker Nancy Pelosi cited ''high ethical standards'' in a letter to Representative William Jefferson asking that he resign his seat on the Committee on Ways and Means in light of ongoing investigations into alleged financial impropriety by Representative Jefferson: Now, therefore, be it

Resolved, That—

(1) pursuant to its authority under clause 3(a)(2) of House Rule XI, the Committee on Standards of Official Conduct, within 10 days of adoption of this resolution, shall establish an Investigative Subcommittee in the matter of Representative Charles B. Rangel or report to the House the reasons for its failure to do so; and

(2) upon adoption of this resolution and pending completion of the aforementioned investigation, Representative Rangel is hereby removed as chairman of the Committee on Ways and Means.

The SPEAKER pro tempore, Mr. ROSS, ruled that the resolution submitted did present a question of the privileges of the House under rule IX.

Mr. HOYER moved to lay the resolution on the table.

The question being put, viva voce,

Will the House lay the resolution on the table?

The SPEAKER pro tempore, Mr. ROSS, announced that the yeas had it.

Mr. BOEHNER demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative	Yeas	226
	Nays	176
	Answered present	11

¶104.13 [Roll No. 609]

So, the motion to lay the resolution on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

POINT OF ORDER

(¶107.9)

PURSUANT TO SECTION 426(B)(4) OF THE CONGRESSIONAL BUDGET ACT OF 1974, A MEMBER WHO MAKES A POINT OF ORDER UNDER SECTION 426(A) OF THE ACT AND SATISFIES THE THRESHOLD BURDEN SPECIFIED IN SECTION 426(B)(2) OF THE ACT BY CITING LANGUAGE IN THE RESOLUTION THAT WAIVES THE APPLICATION OF SECTION 425 OF THE ACT IS RECOGNIZED TO CONTROL ONE-HALF OF THE 20 MINUTES PROVIDED FOR DEBATE ON THE QUESTION OF CONSIDERATION.

PURSUANT TO SECTION 426(B)(3) OF THE CONGRESSIONAL BUDGET ACT OF 1974, AS DISPOSITION OF A POINT OF ORDER RAISED UNDER SECTION 426(A) OF THE ACT, THE CHAIR PUTS THE QUESTION OF CONSIDERATION WITH RESPECT TO THE PROPOSITION THAT IS THE OBJECT OF THE POINT OF ORDER.

On September 24, 2008, Mr. FLAKE made a point of order against consideration of the resolution and said:

''Mr. Speaker, I raise a point of order against House Resolution 1488 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution contains a waiver on all points of order against consideration of the motion to concur, which includes a waiver of section 425 of the Congressional Budget Act, which also causes a violation of section 426(a).''.

The SPEAKER pro tempore, Mr. WEINER, responded to the point of order, and said:

''The gentleman from Arizona [Mr. FLAKE] makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

''In accorance with section 426(b)(2) of the Act, the gentleman from Texas has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

''Pursuant to section 426(b)(3) of the Act, after the debate the Chair will put the question of consideration, to wit: 'Will the House now consider the resolution?'.''.

Mr. FLAKE was further recognized and said:

''Mr. Speaker, the reason I'm standing today is to question this bill in terms of the unfunded mandate point of order. I can tell you honestly, I have no idea if this bill contains unfunded mandates, and I would suggest that most people here are in that position because we only got this bill last night. We haven't been able to read its contents. We know very little of it except that we know very little of it.

''This is a massive bill. Let me just take one part of it, and this part has concerned me about a lot of the legislation that's come forward before this body in recent years. We were told earlier this year that we were going to have a transparent process in terms of earmarks. And, frankly, some good language was passed—earlier this Congress, I should say—to provide transparency and to ensure that when earmarks are passed, they receive a thorough vetting, at least that we know who introduced them and have a chance to actually challenge those ear-

marks on the floor of the House. We have not had that opportunity here.

''This legislation is coming to us with more than 1,200 earmarks that were attached to it in the subcommittee. Now, these earmarks were known only to my office because we managed to get a copy from the Appropriations Committee—that we could not get officially, we had to get unofficially. I would venture that very few other Members have even seen the list of earmarks. Keep in mind that this bill, this Defense Appropriations bill that is included in this CR, has not even been marked up by the full committee. So the full committee has not even seen these earmarks. There are more than 1,200 in the House version; I think there are more than 800 in the Senate version. So, more than 2,000 earmarks that have been added that very few outside of the committee—and outside of the subcommittee that actually dealt with it—have even seen.

''Now, the chairman of the Appropriations Committee was asked about this secretive process earlier today, and Bloomberg said, and I quote, He was asked if the process has been secretive, and he said, 'It has; because if it's done in the public, it will never get done.'. The chairman of the Appropriations Committee said he wanted to avoid his colleagues pontificating on the content of the legislation, saying that's what politicians do when this stuff is done in full view of the press. He said, 'We've done this the old fashioned way by brokering agreements in order to get things done, and I make no apology for it.'.

''Now, think of that statement. We've passed rules in this House saying that we would have a thorough vetting, yet we're bringing more than 1,200 House earmarks to the floor that have not even been vetted by the committee. We're supposed to have that list long before and to be able to vet them, we haven't done that. And we don't even have a chance here. I don't have the opportunity to stand and question any of these earmarks, and neither do any of my colleagues.

''Let me just read a few of them that are in here. The Presidio Heritage Center, one of the Speaker's Office's earmarks, $1.7 million. What is it? We really have no idea. We only got the disclosure letter last night or this morning, and that doesn't tell you all that much. Why is the Presidio Heritage Center in the Defense bill? Yet we won't be able to challenge that here; we won't be able to have a vote on that because it was slipped in, not even vetted by the committee, and certainly not vetted by the full House.

''There is a $3 million earmark for a Cold Weather Layering System. What is that? Is that a coat? We don't know. All I know is this is likely an earmark that's going to a private firm. This is a sole-source contract that everybody has been, rightly, up in arms about when the Federal Government gives out single-source contracts. Here we are doing it without even vetting it in the committee; we're not even vetting it on the House floor. It's passed and done, and we don't even know who it's for or what it's about. Yet, we're doing it. Why? What is the rush to do something like this?

''I understand that this all may seem a little trivial in a week that we may approve $700 billion, but I think it speaks to why people across the country are fed up with us as a Congress for not even vetting these kind of things and for letting 1,200 earmarks come into a bill that we haven't even seen and won't be able to vote on.

''We have an up-or-down vote. This is not even a conference report. There aren't even motions to recommit. This is up or down, take it or leave it, 1,200 earmarks that you have never seen. How does that square with the promises that were made earlier this Congress?

''Now, I make no bones about it; I don't think our party on the Republican side did well with earmarks. We let far too much go. And some of us stood up and tried to stop it. The majority party came into Congress, won the elections in 2006, took over the majority on promises that they would do something. And I have to say that this is proof, once again, that it hasn't been done. How in the world can anyone stand up today and say we have kept our promise in terms of transparency?''.

Mr. MCGOVERN was recognized to speak to the point of order and said:

''Mr. Speaker, technically, this point of order is about whether or not to consider this rule, and ultimately the underlying bill. And in reality, it's about trying to block this bill without any opportunity for debate and without any opportunity for an up-or-down vote on keeping the government running, providing hurricane and other disaster assistance and other critical items. So I think that that is just wrong. And I hope that my colleagues will vote 'yes' so we can consider this important legislation on its merits and not kill it on a procedural motion.

''We need to move forward with this legislation. We need to keep this government running. Those who oppose this bill can vote against final passage, but we need to move forward. So I would urge my colleagues to not allow a purely procedural tactic to kill this bill.''.

Mr. FLAKE was further recognized and said:

''Mr. Speaker, I recognize that I'm here on an unfunded mandates point of order. It's the only chance I've got. They don't allow anybody to stand up and challenge any earmarks. That's not allowed under the rule. So this is the only chance anybody has to stand up and say anything about this bill, and it's a crying shame.

''And I don't blame the gentleman from the Rules Committee for not wanting to address the point at hand here; I don't blame him at all. I wouldn't want to either. I wouldn't want to say that I'm a member of a Rules Committee that would violate the very rules that we ourselves adopted earlier this year so blatantly to simply say we're just not going to discuss it, we're going to bring 1,200 earmarks to the floor and not discuss them at all.

''Let me suggest why it happens this way. I mentioned this was done behind closed doors without rank-and-file Members knowing anything about these earmarks at all. There is good reason for that. If you look at these earmarks, a total of 1,200 worth about $5 billion, 60 percent of the earmarks in this bill go to members of the Appropriations Committee. I'm sorry. The Appropriations Committee are getting 37 percent of all earmarks. When you add to the appropriators those in leadership, those who are committee Chairs, those who are ranking members, so the leadership and the powerful here, 60 percent of the earmarks in this bill are going to that group, which makes up, I think, just under 25 percent of this body.

''Now, if anybody's wondering why this is done behind closed doors and in secret and not with rank-and-file Members able to even see this, that's one of the reasons. Because not only are earmarks bad and it's a misallocation of resources, it can lead to things that we have seen in this House, but it's a spoil system, it's a spoil system. When leadership and those who are on the right committees get these earmarks, it shows what a sham the argument is that we have to do this because we as Members of Congress know our districts better than those bureaucrats and we have to earmark those dollars. Well, does somebody who happens to be a chairman or a ranking minority member happen to know his district a lot better than anybody else? Because that's what we're seeing here, we're seeing a spoil system.

''And it's simply not right. It is not right that we are approving here, with one fell swoop, 1,200 earmarks from the House—800 from the Senate, but that's their business, our business is here—over 1,200 earmarks that nobody in this body has really seen, unless you happen to serve on the subcommittee of Appropriations because the full Committee on Appropriations never vetted these earmarks either. That is simply not right.

''I don't know when we stand up and say we've had enough, because people all over the country certainly have. I don't know why we haven't realized it. I'm sure it's reflected in the 9 percent approval ratings that we have. But in a week where we're approving $700 billion—or likely to approve $700 billion—to bail out other institutions, this might seem trivial to some to be approving $5 billion in earmarks.

''But I think why people across the country are upset is they say, you know you have control of this. You made promises years ago that you would clean up this process and you aren't, because nobody with a straight face can say that we have cleaned up

this process when you bring to the floor, under this bill, more than 1,200 earmarks that have received no vetting whatsoever and will receive no vetting whatsoever because we can't even challenge those on the floor today.

''I have no time remaining. Let me just say, let's hold back. Let's slow this legislation down—whichever we can, whether it's procedurally or otherwise—because we cannot continue to do business this way.''.

Mr. OBEY was recognized to speak to the point of order and said:

''Mr. Speaker, let me simply respond to one thing the gentleman said. He said that no one has done any reforming of the earmarking process since the Democratic Party took control of this House.

''I would point out that the facts indicate quite the contrary. The first year that we were in the majority, we eliminated all earmarks for a year until we could get a handle on the process that had been driven wildly out of control by the previous majority from the other side of the aisle. The second year, we indicated that we would try to cut the amount of money spent on earmarks by 50 percent. The Senate dissented from that. And in the end we were only able to cut it by 40 percent. I would say that is a significant change.

''We also, in the process, provided the public's right to know by guaranteeing that every Member who sought an earmark would have to sign a letter, publicly displayed, which spelled out who asked for the earmark and which spelled out and made quite clear that the Member would have no personal financial interest in the earmark. We also provided that these earmarks would be posted on the committee Web site. As a result, the public will know who has asked for what and they will know who got what. I call that reform even if the gentleman doesn't want to admit it.''.

Mr. MCGOVERN was further recognized and said:

''Mr. Speaker, I just want to associate myself with the remarks of the chairman of the Appropriations Committee.

''I should point out that all of the earmarks are made public. They are on the Rules Committee Web site. They are available in the Appropriations Committee. I should also point out that we have instituted reforms so that what happened when the Republicans were in control, for example, when they air-dropped a provision to provide blanket immunity to drug companies and inserted it into a defense bill after everything had been closed cannot happen.

''I will also say that I think Members of this Congress should have the right to advocate for their districts and make decisions as to how money should be allocated. It is our responsibility as the legislative branch to have a role in where that money goes versus bureaucrats who work with the White House.

''I will also say that there are a lot of Republicans who have applied for and received earmarks. They have gone through this process where they had to fill out forms and vet it through the committee. I know a lot of Republicans, including some of my Republican colleagues on the Rules Committee, have earmarks on this bill because it's public. And I actually trust them to be advocates for their district.

''So, I would point out to my colleagues that things are very different from how they were when the Republicans were in control of this House. There is more sunshine. There is more accountability. I would urge my colleagues to vote 'yes' on the motion to consider.''.

After debate,

The question being put, viva voce,

Will the House now consider the resolution?

The SPEAKER pro tempore, Mr. WEINER, announced that the yeas had it.

Mr. FLAKE objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 6, rule XX, and the call was taken by electronic device.

When there appeared { Yeas ..... 242 / Nays 168

¶107.10 [Roll No. 628]

So, the House decided to consider said resolution.

A motion to reconsider the vote whereby the House decided to consider the resolution was laid on the table.

POINT OF ORDER

(¶109.12)

TO A BILL ADDRESSING A SUBJECT IN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, AN AMENDMENT PROPOSED IN A MOTION TO RECOMMIT BROACHING A SEPARATE SUBJECT IN THE JURISDICTION OF OTHER COMMITTEES IS NOT GERMANE.

THE HOUSE LAID ON THE TABLE AN APPEAL FROM THE RULING OF THE SPEAKER PRO TEMPORE.

On September 26, 2008, Mr. NEAL of Massachusetts, made a point of order against the motion to recommit with instructions, and said:

''I make a point of order that the gentleman's motion to recommit includes provisions within the jurisdiction of other committees, and, as such, is a violation of clause 7 of rule XVI, the germaneness rule.''.

The SPEAKER pro tempore, Mr. ROSS, responded to the point of order, and said:

''The gentleman from Massachusetts makes a point of order that the motion to recommit offered by the gentleman from Michigan proposes an amendment that is not germane to the bill.

''Clause 7 of rule XVI, the germaneness rule, provides that no proposition on a subject different from that under consideration shall be admitted under color of amendment. One of the central tenets of the germaneness rule is that an amendment may not introduce matter within the jurisdiction of committees not represented in the pending measure.

''H.R. 7060 was referred to the Committee on Ways and Means. Its provisions are confined to the jurisdiction of that committee.

''The instructions contained in the motion to recommit address laws within the jurisdiction of committees other than Ways and Means. For example, the instructions propose amendments to the Secure Rural Schools and Community Self-Determination Act of 2000, and the Employee Retirement Income Security Act of 1974. Those acts fall within the jurisdiction of the Committees on Agriculture and Natural Resources, and the Committee on Education and Labor, respectively.

''Accordingly, the instructions in the motion to recommit are not germane. The point of order is sustained.''.

Mr. CAMP of Michigan, appealed the ruling of the Chair.

The question being stated, viva voce,

Will the decision of the Chair stand as the judgment of the House?

Mr. NEAL of Massachusetts, moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. ROSS, announced that the yeas had it.

Mr. CAMP of Michigan, demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the affirmative ..... { Yeas ..... 220 / Nays 198

¶109.13 [Roll No. 648]

So, the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

SUBPOENAS RECEIVED PURSUANT TO RULE L

On January 29, 2008, the SPEAKER pro tempore, Mr. PASTOR, laid before the House a communication, which was read as follows:

COMMITTEE ON ARMED SERVICES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 28, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with the Office of General Counsel, I have determined that compli-

ance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

PAUL ARCANGELI,
Professional Staff Member.

On January 29, 2008, the SPEAKER pro tempore, Mr. PASTOR, laid before the House a communication, which was read as follows:

JANUARY 28, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ROBERTA Y. HOPKINS,
Acting Chief of Staff.

On January 29, 2008, the SPEAKER pro tempore, Mr. PASTOR, laid before the House a communication, which was read as follows:

JANUARY 28, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

STEPHANIE R. BUTLER,
District Manager.

On February 6, 2008, the SPEAKER pro tempore, Mr. BAIRD, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 28, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ERICKA EDWARDS-JONES,
Congressional Aide.

On February 6, 2008, the SPEAKER pro tempore, Mr. BAIRD, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 29, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ANGELLE B. KWEMO,
Legislative Director.

On March 6, 2008, the SPEAKER pro tempore, Mr. PASTOR, laid before the House a communication, which was read as follows:

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, HOUSE OF REPRESENTATIVES,
Washington, March 5, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with two administrative subpoenas for documents issued by the Merit Systems Protection Board.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoenas is consistent with the privileges and rights of the House.

Sincerely,

DANIEL P. BEARD,
Chief Administrative Officer.

On March 10, 2008, the SPEAKER pro tempore, Ms. HIRONO, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, March 6, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena for documents issued by the U.S. District Court for the Central District of California.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is inconsistent with the precedents and privileges of the House.

Sincerely,

SILVESTRE REYES,
Chairman.

On March 31, 2008, the SPEAKER pro tempore, Mr. BERRY, laid before the House a communication, which was read as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 14, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a civil subpoena, issued by the U.S. Court of Federal Claims, for documents and testimony.

After consultation with counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

MARION BERRY,
Member of Congress.

On April 22, 2008, the SPEAKER pro tempore, Mr. JACKSON of Illinois, laid before the House a communication, which was read as follows:

WASHINGTON, DC,
April 15, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a preliminary hearing subpoena for testimony issued by the Court of the Eighteenth Judicial District of Kansas.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and rights of the House.

Sincerely,

JILL CRAVEN.

On April 24, 2008, the SPEAKER pro tempore, Mr. ALTMIRE, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 16, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with two criminal trial subpoenas for testimony issued by the Superior Court for San Diego County, California.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoenas is consistent with the privileges and rights of the House.

Sincerely,

JESSICA POOLE,
Deputy District Director.

On April 24, 2008, the SPEAKER pro tempore, Mr. ALTMIRE, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 16, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with two criminal trial subpoenas for testimony issued by the Superior Court for San Diego County, California.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoenas is consistent with the privileges and rights of the House.

Sincerely,

NICHOLAUS NORVELL,
Staff Assistant.

On April 24, 2008, the SPEAKER pro tempore, Mr. ALTMIRE, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 16, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with two criminal trial subpoenas for testimony issued by the Superior Court for San Diego County, California.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoenas is consistent with the privileges and rights of the House.

Sincerely,

TODD GLORIA,
District Director.

On April 29, 2008, the SPEAKER pro tempore, Mr. BLUMENAUER, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 21, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a civil trial subpoena for testimony issued by the Superior Court of Floyd County, Georgia.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoena is inconsistent with the privileges and rights of the House.

Sincerely,

JANET BYINGTON,
District Director, Congressman Phil Gingrey.

On May 15, 2008, the SPEAKER pro tempore, Mr. PERLMUTTER, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, May 9, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a criminal trial subpoena for testimony issued by the District Court of Maryland for Baltimore County.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and rights of the House.

Sincerely,

KATIE MALONE.

On May 19, 2008, the SPEAKER pro tempore, Mr. MCGOVERN, laid before the House a communication, which was read as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, May 9, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the District Court of Charles County, Maryland, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JAMIE GROVE,
Constituent Liaison.

On July 16, 2008, the SPEAKER pro tempore, Mr. ARCURI, laid before the House a communication, which was read as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 9, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to rule VIII of the Rules of the House of Representatives, that I have received a civil trial subpoena for documents and testimony, issued by the Small Claims Division of the San Francisco Superior Court.

After consulting with the Office of General Counsel, I have determined that compliance with the documentary aspect of the subpoena is consistent with the privileges and rights of the House, but that compliance with the testimonial aspect of the subpoena is not consistent with the privileges and rights of the House.

Sincerely,

NICOLE SARABIA RIVERA,
Field Representative/Caseworker.

On September 8, 2008, the SPEAKER pro tempore, Mr. SESTAK, laid before the House the following communication, which was read as follows:

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, HOUSE OF REPRESENTATIVES,
Washington, DC, August 1, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a grand jury subpoena, issued by the United States District Court for the District of Columbia, for the production of documents.

After consultation with the Office of General Counsel, I will make the determinations required by Rule VIII.

Sincerely,

DANIEL P. BEARD.

On September 26, 2008, the SPEAKER pro tempore, Mr. ALTMIRE, laid before the House a communication, which was read as follows:

SEPTEMBER 15, 2008.
Hon. NANCY PELOSI,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the District Court of Charles County Maryland, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JAMIE GROVE,
Constituent Liaison.

On October 3, 2008, the SPEAKER pro tempore, Mr. JOHNSON of Georgia, laid before the House a communication, which was read as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 1, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the U.S. District Court for the Eastern District of Virginia, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

STEPHANIE R. BUTLER,
District Director.

On October 3, 2008, the SPEAKER pro tempore, Mr. JOHNSON of Georgia, laid before the House a communication, which was read as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 1, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the U.S. District Court for the Eastern District of Virginia, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ERICKA EDWARDS-JONES,
Congressional Aide.

On October 3, 2008, the SPEAKER pro tempore, Mr. JOHNSON of Georgia, laid before the House a communication, which was read as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 1, 2008.
Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the U.S. District Court for the Eastern District of Virginia, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ANGELLE KWEMO,
Legislative Director.

On October 3, 2008, the SPEAKER pro tempore, Mr. JOHNSON of Georgia, laid before the House a communication, which was read as follows:

OCTOBER 1, 2008.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena, issued in the U.S. District Court for the Eastern District of Virginia, for testimony in a criminal case.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ROBERTA Y. HOPKINS,
Acting Chief of Staff.

On November 20, 2008, the SPEAKER pro tempore, Mr. MCNULTY, laid before the House a communication, which was read as follows:

NOVEMBER 19, 2008.

Hon. NANCY PELOSI,
Office of the Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that my office has been served with a criminal trial subpoena for documents issued by the U.S. District Court for the Central District of Illinois. This relates to a constituent matter. Two of my district offices have casework files that are relevant to the investigation and charges filed.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and rights of the House.

Sincerely,

RAY LAHOOD,
Member of Congress.